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88-1779

No. ____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

VECO INTERNATIONAL, INC., *et al.*,
Appellants,

v.

ALASKA PUBLIC OFFICES COMMISSION,
Appellee.

On Appeal from the Supreme Court of Alaska

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether the Alaska Campaign Disclosure Act, as construed by the Supreme Court of Alaska, is unconstitutionally overbroad in imposing registration and disclosure requirements upon "any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election," without regard to any minimum level of expenditures.

2. Whether the Alaska Campaign Disclosure Act, as construed by the Supreme Court of Alaska, is unconstitutionally vague in imposing registration and disclosure requirements upon combinations of persons "acting jointly" who undertake "substantial action," without any definition of these terms.

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Appellants,

v.

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Appellee.

On Appeal from the Supreme Court of Alaska

JURISDICTIONAL STATEMENT

VECO International, Inc., VECO, Inc., and Norcon, Inc., appellants, appeal from the final judgment of the Supreme Court of Alaska, dated April 1, 1988. This Court has jurisdiction over the appeal, and a substantial question is presented by the Alaska Supreme Court's rejection of appellants' challenge to the Alaska Campaign Disclosure Act.[1]

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[1] The following companies are parents, subsidiaries or affiliates of appellants: VEMAR, Inc.; VECO Drilling, Inc.; VECO Offshore, Inc.; Arctic Rentals, Inc.; Southwest VECO, Inc.; and Alaska United Drilling, Inc. Sup. Ct. R. 28.1.

OPINIONS BELOW

The opinion of the Supreme Court of Alaska (App., *infra*, 1a-36a) is reported at 753 P.2d 703 (1988). The opinions of the Superior Court (App., *infra*, 37a-59a) and of the Alaska Public Offices Commission (App., *infra*, 60a-68a) are not reported.

JURISDICTION

The judgment of the Supreme Court of Alaska sustaining the application to appellants of the Alaska Campaign Disclosure Act, Alas. Stats. §§ 15.13.010 *et seq.*, was entered on April 1, 1988. (App., *infra*, 1a-36a). In reaching its decision, the Supreme Court of Alaska rejected appellants' constitutional argument that the Alaska Campaign Disclosure Act on its face violates the First Amendment to the United States Constitution. (App., *infra*, 13a-23a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2).

A notice of appeal was filed in the Supreme Court of Alaska on June 13, 1988. (App., *infra*, 75a-78a). On June 20, 1988, Justice O'Connor extended the time for appellants to docket an appeal to and including July 30, 1988.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The First Amendment to the United States Constitution provides, in relevant part, "Congress shall make no law . . . abridging the freedom of speech . . . ." The protection of freedom of speech is made applicable against the states by the Fourteenth Amendment: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

The relevant provisions of the Alaska Campaign Disclosure Act are reproduced in the Appendix. (App., *infra*, 69a-74a).

STATEMENT OF THE CASE

The Alaska Campaign Disclosure Act (the "Act") requires that "[e]ach group, before making an expenditure on behalf of, or in opposition to, a candidate or a contribution to a candidate, shall register" with appellee Alaska Public Offices Commission. Alas. Stats. § 15.13.050. (App., *infra*, 70a). A "group" is defined to include "any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election." Alas. Stats. § 15. 13.130(4). (App., *infra*, 74a). Each "group" must appoint and file the name and address of its campaign treasurer, Alas. Stats. § 15.13.060 (App., *infra*, 70a-71a), and file periodically with appellee detailed reports including an itemization of all campaign contributions and expenditures made, incurred or authorized by the "group." Alas. Stats. §§ 15.13.040, 15.13.110. (App., *infra*, 69a-72a).

Appellants are Alaska corporations that provide oil field services.[2] On August 11, 1983, two representatives of appellants met with Theda Pittman, appellee's Executive Director. Appellants' representatives asked whether appellants would be subject to disclosure requirements under the Act if they sponsored a candidate's appearance before their employees and then offered employees the opportunity to authorize a payroll deduction to be contributed to that candidate. Ms. Pittman responded that this proposal would not come under the Act because individual employees would decide whether and how much to contribute, and the employer would only be transmitting the funds for the employee. (See App., *infra*, 10a).

In late 1983, appellants distributed to their employees a form by which they could authorize appellants to deduct $100 from their paychecks to be used as a contri-

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[2] Appellants VECO, Inc. and Norcon, Inc. are subsidiaries of appellant VECO International, Inc.

bution to candidates to be recommended by the Alaska Political Action Committee ("APAC").[3] The authorization form provided that the employees would be informed of APAC's recommendations and would then be given 15 days to revoke their authorizations.[4] (App., *infra*, 5a). APAC subsequently recommended five candidates for the Alaska Senate. Upon being informed of these recommendations, three of appellants' employees withdrew from the plan entirely, and three others issued specific instructions as to how to distribute their contributions among the recommended candidates. Appellants then distributed the remaining contributions at random to the recommended candidates in essentially equal shares.

In reliance on Pittman's assurances given on behalf of appellee the previous August, appellants did not register or file reports under the Act. In February 1984, in response to a request by appellants, Pittman sent them

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[3] APAC was formed in 1983 by Bill Allen, Chairman of the Board of appellants, and Tennessee Miller for the purpose of coordinating support for state and local political candidates who are committed to maintaining the health of the oil and gas exploration and production industry in Alaska.

[4] The authorization form stated in full:

> I hereby authorize the deduction of One Hundred Dollars ($100) from my next paycheck. The withheld money should be paid according to the recommendation of the Alaska Political Action Committee unless within fifteen days after receiving the Committee's recommendation I revoke this authorization. I understand that you will provide me with evidence of who received my contributions and in what amount so that I can use this information to take the tax credit off my Federal Income taxes. Also I will use this information to apply for the $100 maximum political contribution refund from the State of Alaska provided I qualify as an Alaska resident and provided that the legislature appropriates funds for paying the refunds.
>
> _____
>
> Employee I.D. _____
>
> Date: _____

two letters which indicated that the crucial factor in determining whether a payroll deduction plan involved a "group" under the Act was whether the employer or the employees *named* the recipients of the employees' contributions. (App., *infra*, 11a). Because the final decision concerning who would receive contributions remained with the employees, appellants concluded that they had not formed any "groups" under this critical criterion identified by appellee. Accordingly, appellants made no effort to register or to file reports.

In the summer of 1984, appellee began an investigation into possible violations of the Act by appellants. On October 12 and 23, 1984, appellee, in reliance on its staff's recommendation, found that each of the appellants had formed a "group" with its employees within the meaning of § 15.13.130(4) and had therefore violated the Act by failing to register and file reports. Appellee assessed against appellants the maximum civil penalties allowed by law, but found insufficient evidence to bring a criminal prosecution. See Alas. Stats. §§ 15.13.120, 15.13.125. Following an oral hearing requested by appellants, on February 16, 1985, appellee reaffirmed its earlier findings and assessed maximum civil penalties totalling $72,660. (App., *infra*, 60a-68a). In so doing, appellee specifically rejected appellants' claim that the Act's definition of "group" is unenforceably vague. (App., *infra*, 63a-65a).

Appellants sought review of appellee's decision in the Superior Court of Alaska on the grounds, *inter alia*, that the Act is unconstitutionally overbroad and vague in violation of the First Amendment to the United States Constitution. On April 9, 1986, the court issued an opinion affirming appellee's decision in all respects. (App., *infra*, 37a-59a). The court held that the Act "is not constitutionally overbroad but serves compelling state interests in disclosure of campaign contributions and expenditures." (App., *infra*, 44a). It further held that the

Act's definition of "group" is not unconstitutionally vague. (App., *infra*, 44a-47a).

Appellants appealed this decision to the Supreme Court of Alaska, again raising the arguments of facial overbreadth and vagueness. The Supreme Court issued its opinion on April 1, 1988. (App., *infra*, 1a-36a). In response to appellants' overbreadth argument, the court acknowledged that the Act as written was overbroad and that "[t]here is a level of joint political activity below which the government has no legitimate interest in regulating." (App., *infra*, 20a).[5] However, the court asserted that it could solve this problem by construing the Act to reach only "*substantial* activities that are likely to *directly* cause more than a few votes to shift, not including intimate activities conducted entirely within one's family circle." (App., *infra*, 21a; emphasis added). Employing this narrowing construction, the court held that the statute was not overbroad.

The Alaska Supreme Court acknowledged that its redefinition of the statute to embrace only "substantial" action raised a difficult constitutional question of vagueness. (App., *infra*, 21a-22a). It held, however, that the vagueness in its added language did not justify invalidating the statute on its face. *Id.* Furthermore, the court believed that the Act's application only to persons who take joint action with the "major purpose" of influencing an election vitiated any other vagueness attack. (App., *infra*, 22a-23a). Accordingly, the court affirmed the constitutionality of the Act on its face and as applied to appellants.[6]

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[5] The court construed the statute to require no registration or disclosure by groups that spend no money. (App., *infra*, 17a).

[6] The court vacated appellee's assessment of penalties and remanded for a reassessment on three state law grounds: (1) appellee was estopped to find any violation of the Act before February 1984 (App., *infra*, 10a-13a); (2) appellee unlawfully failed to state

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

This case raises the important question of the extent to which a state can regulate the First Amendment activities of its citizens relating to election campaigns without regard to the nature or scope of what those citizens actually do. The Act imposes registration and disclosure requirements on individuals who act together to influence an election. It thereby burdens activities—including letter writing, picketing and leafleting—that are protected by the First Amendment and that will be chilled if persons who exercise their First Amendment rights must register with the state.

The Alaska Supreme Court recognized that on its face the Act was overbroad, but sought to eliminate the overbreadth problem by limiting the scope of the Act to "substantial" activities. In so doing, however, it not only failed to resolve the overbreadth problem in the statute as written, but made the statute even more vague than it was when enacted, and therefore failed to cure the law's constitutional defects.

A number of states in addition to Alaska have enacted election campaign laws that impose disclosure and registration requirements on individuals and groups without regard to their level of expenditures or the scope of their activity. This Court has never considered to what extent states may indiscriminately interfere with the exercise of First Amendment rights not involving meaningful expenditures. The Court therefore should exercise its

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its reasons for imposing the maximum penalty (App., *infra*, 25a-26a); and (3) penalties should not have accrued during appellants' administrative appeal (App., *infra*, 27a-31a). Because the remand involves only the amount of penalty to be assessed against appellants, and does not affect the holding that appellants violated the Act, the Alaska Supreme Court's decision is final for purposes of 28 U.S.C. § 1257(2). *See Mississippi Power & Light Co.* v. *Mississippi*, 56 U.S.L.W. 4751, 4755 n.11 (June 24, 1988); *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469, 480-81 (1975).

jurisdiction over this appeal in order to resolve these important questions.

I. THERE IS A SUBSTANTIAL QUESTION WHETHER THE ACT IS UNCONSTITUTIONALLY OVERBROAD.

A. The Alaska Act Is Subject To Heightened Overbreadth Scrutiny Under This Court's Decisions.

Any law that regulates protected First Amendment speech must be overturned on its face if it exhibits any "real and substantial" overbreadth, regardless of whether a validly written law could have imposed the same burdens on a plaintiff. See, *e.g.*, *Board of Airport Commissioners* v. *Jews for Jesus*, 107 S. Ct. 2568, 2571-72 (1987); *City of Houston* v. *Hill*, 107 S. Ct. 2502, 2508 (1987); *Broadrick* v. *Oklahoma*, 413 U.S. 601, 611-16 (1973). This rule reflects the notion that our "delicate" and "precious" First Amendment freedoms need "breathing space" to survive; by its very existence, a statute that overbroadly burdens speech deters that speech and thus poses an "unacceptable risk of the suppression of ideas." *Members of the City Council* v. *Taxpayers for Vincent*, 466 U.S. 789, 797 (1984); *NAACP* v. *Button*, 371 U.S. 415, 433 (1963); see also *Keyishian* v. *Board of Regents*, 385 U.S. 589, 609 (1967). This is particularly true of a statute which carries potential criminal sanctions or imposes significant monetary penalties. See *Dombrowski* v. *Pfister*, 380 U.S. 479, 486-87 (1965).

This Court has recognized that disclosure requirements impose a significant burden that may deter protected speech, and thus it has applied overbreadth analysis to statutes requiring disclosure of speech or associational activities. *Buckley* v. *Valeo*, 424 U.S. 1, 68-74, 82-84 (1976); *Shelton* v. *Tucker*, 364 U.S. 479 (1960); *Talley* v. *California*, 362 U.S. 60 (1960). Strict overbreadth scrutiny is especially important when, as here, a statute directly burdens the discussion of public issues. The

political discussion which the Alaska Campaign Disclosure Act regulates is "integral to the operation of the system of goverment established by our Constitution." *Buckley*, 424 U.S. at 14.[7] Moreover, group speech, which is the particular focus of the challenged provisions, is a traditional and indispensable means for those of limited resources or initiative to participate in political debate. See *FEC* v. *National Conservative Political Action Committee*, 470 U.S. 480, 494-95 (1985) (*"NCPAC"*); *Citizens Against Rent Control* v. *City of Berkeley*, 454 U.S. 290, 294-95 (1981) (*"CARC"*).

For these reasons, a regulation that burdens political association may be sustained only "if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." *Buckley*, 424 U.S. at 25.[8] Regulations such as the Act here at issue must be subjected to "exacting scrutiny" to ensure that there is a "substantial relation" between the information sought and a compelling state interest. *Id.* at 64; see also *CARC*, 454 U.S. at 294 ("regulation of First Amendment rights is always subject to exacting judicial review"). A statute violates the First Amendment if, with respect to any substantial category of required disclosure, "the relation

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[7] *See also Mills* v. *Alabama*, 384 U.S. 214, 218 (1966) ("there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs"); *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 776-77 (1978).

[8] "The right to privacy in one's political associations and beliefs will yield only to a subordinating interest of the State that is compelling . . ., and then only if there is a substantial relation between the information sought and an overriding and compelling state interest."

Brown v. *Socialist Workers '74 Campaign Committee*, 459 U.S. 87, 91-92 (1982) (citations omitted).

of the information sought to the purposes of the Act [is] too remote." *Buckley*, 424 U.S. at 80.[9]

B. The Alaska Supreme Court's Decision Poses A Serious Issue Under The Balancing Test Employed By This Court In Analyzing Claims Of Overbreadth Concerning Campaign Disclosure Laws.

This Court has never given plenary review to any statute that imposes burdens on campaign speech as broadly as the reporting and disclosure provisions of Alaska's Act. The principal case in which this Court has considered the constitutionality of required disclosure of political contributions and expenditures is *Buckley* v. *Valeo*, *supra*, in which the Court upheld reporting and disclosure provisions of the Federal Election Campaign Act ("FECA"), 2 U.S.C. §§ 431 *et seq.* Under FECA as it then existed, the principal reporting and disclosure requirements applied primarily to candidates and to "political committees," defined as groups of persons that receive contributions or make expenditures of over $1,000 in a calendar year "for the purpose of . . . influencing" a federal election. 2 U.S.C. §§ 431(d), (e)(1), (f)(1), 424 U.S. at 145-47.[10] FECA required these entities to

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[9] This Court's recent campaign finance cases confirm the stringent scrutiny which must be applied in order to protect the core First Amendment rights that are implicated by campaign speech. *See, e.g., FEC* v. *Massachusetts Citizens for Life, Inc.*, 107 S. Ct. 616 (1986) (*"MCFL"*) (federal government may not apply its otherwise legitimate ban on campaign expenditures by corporations to a non-business corporation concerned solely with the promotion of ideas); *NCPAC, supra* (invalidating limitations on independent expenditures by committees in connection with campaigns); *CARC, supra* (overturning a municipal ordinance that limited contributions to committees for the purpose of influencing ballot initiatives). All of these cases emphasize the importance of invalidating any regulation of campaign speech that burdens more speech than is essential to serve the state's compelling interest.

[10] The Court reprinted the relevant sections of FECA as an Appendix to its opinion in *Buckley*.

keep records of their contributions received in excess of $10 and of their expenditures, and to file detailed reports of contributions received and expenditures made in excess of $100. 2 U.S.C. §§ 432(c), (d), 434(b), 424 U.S. at 151-52, 157-59. In addition, every other individual or group who made independent expenditures aggregating over $100 in a calendar year was required to file similar reports. 2 U.S.C. § 434(e), 424 U.S. at 160.[11]

The provisions of Alaska's Act go substantially beyond those of FECA in two respects. First, unlike FECA, the disclosure provisions of the Alaska Campaign Disclosure Act are not limited to groups that spend more than an established threshold amount. Rather, full registration and disclosure is required of any combination of persons who take a single action the major purpose of which is to influence an election, so long as they make even a small contribution or expenditure. Alas. Stats. § 15.13.130(4). (See App., *infra*, 17a). Second, the Act requires groups to report *all* of their contributions and expenditures, no matter how small. Alas. Stats. § 15.13.040(b)(3). This is in contrast to the effect of FECA, under which the privacy and First Amendment rights of both individuals and groups are recognized and protected with respect to contributions and expenditures of $100 or less.

The additional coverage of the Act burdens a large amount of private speech. For example, a husband and wife who jointly write a letter to the editor of a local newspaper endorsing a candidate are "acting jointly [to] take action the major purpose of which is to influence the outcome of an election." Under the Act, this "group"

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[11] Congress has since substantially amended FECA to renumber the sections, raise the recordkeeping and reporting thresholds, and eliminate in most circumstances any itemization of expenditures. Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, §§ 301 *et seq.*, *reprinted in* 1979 U.S. Code Cong. & Admin. News 1339-1369.

is required to register with appellee and to report as an expenditure the 25-cent stamp used to mail the letter. Similarly, a small group of friends who informally agree to picket a campaign rally would be required to report their cost of placards and markers used in making signs. Such one-time agreements among friends or family members to undertake small-scale political activity are a common and essential part of a vibrant democratic system. Imposition of disclosure and registration requirements clearly burdens such grass-roots political activity and chills the exercise of important First Amendment rights.

The Alaska Supreme Court, recognizing that the Act as drafted was overbroad, sought to limit its scope by construing it to apply only to "substantial activities that are likely to directly cause more than a few votes to shift, not including intimate activities conducted entirely within one's family circle." (App., *infra*, 21a). However creative it may be, this construction does not eliminate the Act's application to a host of activities undertaken by small, informal groups. Clearly, even a few people, spending only a few dollars, can take action that is intended to and does shift more than a few votes. No conscientious citizen could safely conclude that the activities cited in the previous paragraph are anything but "substantial," and their sole purpose is "to directly cause more than a few votes to shift." The court's "limiting" construction thus leaves an important overbreadth question to be decided by this Court.[12]

In considering an overbreadth challenge to required campaign disclosure, the courts must consider both the government's interest in broadly requiring disclosure and the effect of disclosure on those engaging in campaign

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[12] In addition, the Alaska court's definition of "substantial" action raises a significant question of vagueness, which is discussed at pp. 22-23, *infra*.

speech. In *Brown* v. *Socialist Workers '74 Campaign Committee, supra*, this Court held that the State of Ohio could not apply its campaign disclosure requirements to the Socialist Workers Party. First, the Court observed that the government had far less interest in requiring disclosure by a minor party which does not have extensive funds and which has little chance of winning an election than it did with regard to a major party. 459 U.S. at 95. Second, the Court found that disclosure posed an especially great risk of crippling the Socialist Workers Party by discouraging individuals from making contributions or receiving disbursements. *Id.* at 96-98. The logic of the two-part test used in *Brown* applies equally to any case involving an overbroad campaign reporting and disclosure statute. The government's interest must be balanced against the public detriment in order to arrive at a final determination of whether the government's interest is compelling and may therefore constitutionally be pursued.[13]

Under the *Brown* test, the unconstitutionality of Alaska's broadly applicable disclosure requirements is readily apparent. First, indiscriminate disclosure by *all* combinations of persons fails to promote any compelling interest of the state. In *Buckley*, this Court set out three interests which the state might legitimately promote through disclosure requirements: helping the public to place a candidate on the political spectrum, deterrence of corruption and the appearance of corruption, and enforcement of other campaign laws. 424 U.S. at 66-68. Neither appellee nor the Alaska Supreme Court has contended that disclosure of small contributions and expenditures

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[13] The plaintiffs in *Brown* challenged the Ohio law as applied, whereas appellants here assert that the Act, even as construed by the state court, is substantially overbroad on its face. *See Broadrick*, 413 U.S. at 612. Under *Broadrick*, this difference does not affect the questions that must be asked in determining overbreadth.

by politically marginal groups does anything to deter corruption or its appearance. (See App., *infra*, 17a). *Cf. Buckley*, 424 U.S. at 80-81. The question, then, is whether the Act sufficiently promotes either of the other purposes identified in *Buckley* to justify the substantial burdens which it imposes upon a broad range of vulnerable speech.

The Act's relationship to either of these goals is sufficiently questionable as to present a substantial federal question for this Court's review. It is true that, in many instances, information regarding the identity of a candidate's supporters may help voters to define that candidate's positions. *Id.* at 81. It does not follow, however, that "[d]isclosure of even a 'token contribution' can provide the electorate with valuable information concerning the political position of a candidate." (App., *infra*, 18a). To the contrary, it is unclear how the public could derive any benefit at all from knowing that a small group of private citizens, of otherwise unknown political inclinations, made a small expenditure for or against a certain candidate's interest.[14] Indeed, by its sheer volume, such information may be more confusing than helpful.[15] Much of the Act's application thus appears marginally related, if at all, to the state's interest in promoting a politically informed citizenry.

It is also questionable whether broad-scale application of group disclosure requirements substantially promotes enforcement of other campaign laws. Appellee has argued that universal reporting is necessary to ensure that groups which ultimately make large expenditures keep accurate records from the outset. (App., *infra*, 18a).

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[14] This is still more true of an expenditure intended to influence the outcome of a ballot proposition. *See* Alas. Stats. § 15.13.010(b).

[15] Furthermore, to the extent that the Act chills political speech, it actually defeats its purported purpose of increasing the flow of information to the public. *See Wilson* v. *Stocker*, 819 F.2d 943, 949 (10th Cir. 1987).

This Court has cautioned, however, against the indiscriminate burdening of speech on the mere speculation that it will prevent the circumvention of valid laws. *Buckley*, 424 U.S. at 55-56. As presently written and construed, the Act requires disclosure by innumerable "groups" that pose no danger whatsoever of even approaching Alaska's contribution limitation of $1000 to a candidate in a year. Alas. Stats. § 15.13.070(a). The state overreaches when it burdens all combinations simply to ensure adequate recordkeeping by those organizations that are properly subject to campaign limitations.

Furthermore, with regard to the second *Brown* inquiry, compelled disclosure seriously burdens the speech and associational activities of small participants in the political process. "Detailed recordkeeping and disclosure obligations, along with the duty to appoint a treasurer and custodian of the records, impose administrative costs that many small entities may be unable to bear." *MCFL*, 107 S. Ct. at 626 (opinion of Brennan, J., joined by Marshall, Powell and Scalia, JJ.).[16] In addition, those who spend "relatively small amounts are likely to be especially sensitive to recording or disclosure of their political preferences." *Buckley*, 424 U.S. at 83. There is an important constitutional interest in protecting the privacy of those who legitimately wish their speech to remain anonymous. See *Brown*, 459 U.S. at 91; *Buckley*, 424 U.S. at 64; *NAACP* v. *Alabama*, 357 U.S. 449 (1958). In its indiscriminate application of disclosure requirements to small and temporary combinations of individuals, the Act imposes substantial additional burdens on speech the con-

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[16] *See also New York Civil Liberties Union* v. *Acito*, 459 F. Supp. 75, 87 (S.D.N.Y. 1978) ("In many instances, especially those involving small and relatively unsophisticated organizations, the thought of hiring an attorney and researching and complying with the law will cause the organization to simply refrain from any political activities rather than go through the compliance headache").

stitutionality of which this Court has not yet had an opportunity to consider.

The onus of this additional burden is exacerbated by its application only to group, and not individual, speech. The value of speech to the community, and its protection under the First Amendment, is the same whether it is engaged in by one person or a combination of persons. See *Bellotti*, 435 U.S. at 777. "To place a Spartan limit—or indeed any limit—on individuals wishing to band together to advance their views . . ., while placing none on individuals acting alone, is clearly a restraint on the right of association." *CARC*, 454 U.S. at 296. The question is substantial whether any distinction exists between group and individual speech that can support such a discriminatory burden. *Id.* In sum, the question of the proper balance between the state's interest in the disclosure required by the Act and the burden that law imposes upon protected activities is a matter this Court should resolve only after full briefing by the parties.

C. The Alaska Supreme Court's Decision Conflicts With The Analysis Of This Court And The Holdings Of Other Courts.

The Act's broad applicability also runs counter to the holdings and *dicta* of this Court and of other state and federal courts. In approving the disclosure provisions of FECA in *Buckley*, this Court expressed its concern that the $100 reporting threshold seemed low, but ultimately concluded that that figure was not "wholly without rationality." 424 U.S. at 83. This conclusion strongly suggests that the failure to make any reasonable effort to limit reporting requirements to activities which involve enough money to implicate substantially the state's interests would violate the Constitution.[17] The issue here

[17] Those lower courts which considered the disclosure provisions of FECA implied still more strongly that the $100 threshold was a necessary condition of their constitutionality. *See Buckley* v. *Valeo*, 519 F.2d 821, 865-68 (D.C. Cir. 1975), *aff'd in part and rev'd*

is not whether the legislature correctly decided where to draw an arbitrary line. Rather, the question is whether the Act, by its failure to incorporate any monetary threshold, burdens speech and associational activities which are "differen[t] in kind" from those which the state may legitimately regulate. *Id.* at 30. The Alaska Supreme Court's negative answer to this question is inconsistent with this Court's expressed concern in *Buckley* that the Constitution requires the state somehow to limit its intrusion into private political activity. The holding also conflicts with the Alaska court's recognition that there are some kinds of joint political activity in which the government has no legitimate interest. (App., *infra*, 20a). *Cf. NCPAC*, 470 U.S. at 496, 500 (expressing concern over unnecessary application of regulations to small neighborhood groups).

The Alaska Supreme Court's decision is even more directly inconsistent with the holdings of several other courts that have invalidated or limited disclosure statutes that applied to individuals or groups whose involvement in the political process posed no substantial threat to the integrity of the process. For instance, the district court in *New York Civil Liberties Union* v. *Acito*, *supra*, overturned New York's campaign disclosure law because it reached a "wide spectrum of groups," including organizations that were only incidentally involved in the political process. 459 F.Supp. at 87. Because the state's interest in such "organizations . . . is minimal," the court held, it could not constitutionally burden their speech. *Id.* at 89. The Alaska Supreme Court, by contrast, affirmed the Alaska Act's application to a "wide spectrum" of combinations, many of which pose no danger to the political process.

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in part, 424 U.S. 1 (1976); *United States* v. *Finance Committee to Re-Elect the President*, 507 F.2d 1194, 1200 (D.C. Cir. 1974); *see also Doe* v. *Martin*, 404 F. Supp. 753, 761 (D.D.C. 1975) (considering similar provisions of District of Columbia law).

Similarly, several courts have overturned blanket disclosure requirements on all persons involved in creating, producing or distributing campaign literature.[18] Under the Alaska Act as construed, however, a group of people who agree to distribute literature—including literature prepared by others—would be subject to reporting requirements if they spend any money or incur any expenses (*e.g.*, copying charges). Finally, the New Jersey Supreme Court, in a decision that the Alaska Supreme Court actually relied upon in this case (App., *infra*, 20a n.21), specifically held that the state could not require disclosure by lobbyists unless they spent "significant sums of money." *New Jersey Chamber of Commerce* v. *New Jersey Election Law Enforcement Comm'n*, 82 N.J. 57, 411 A.2d 168, 179 (1980).[19] By ignoring the lack of any expenditure threshold under the Act, the court thus created a conflict with the very case that it cited as especially persuasive.

In addition to Alaska, a number of other states also have registration and disclosure laws that go substantially beyond federal law in burdening small-scale political speech. Thus, several states require registration or re-

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[18] *E.g.*, *Wilson* v. *Stocker*, 819 F.2d 943 (10th Cir. 1987); *Schuster* v. *Municipal Court*, 167 Cal. Rptr. 447, 109 Cal. App. 3d 887 (1980), *cert. denied sub nom.*, *California* v. *Schuster*, 450 U.S. 1042 (1981); *State* v. *North Dakota Education Ass'n*, 262 N.W.2d 731 (N.D. 1978); *State* v. *Fulton*, 337 So. 2d 866 (La. 1976); *Commonwealth* v. *Dennis*, 368 Mass. 92, 329 N.E.2d 706 (1975) (*dicta*); *Printing Industries of the Gulf Coast* v. *Hill*, 382 F. Supp. 801 (S.D. Tex. 1974), *vacated and remanded on other grounds*, 422 U.S. 937 (1975); *People* v. *Duryea*, 76 Misc.2d 948, 351 N.Y.S.2d 978 (Sup. Ct.), *aff'd*, 44 A.D.2d 663, 354 N.Y.S.2d 129 (1974); *Zwickler* v. *Koota*, 290 F. Supp. 244 (E.D.N.Y. 1968), *rev'd on other grounds sub nom. Golden* v. *Zwickler*, 394 U.S. 103 (1969). *But see Morefield* v. *Moore*, 540 S.W.2d 873 (Ky. 1976) (upholding Kentucky statute); *United States* v. *Insco*, 365 F. Supp. 1308 (M.D. Fla. 1973) (upholding federal statute).

[19] The New Jersey court held, in the context of lobbying, that a $100 threshold was too low to be "significant." *Id.* at 181-82.

porting by any combination of persons that takes even a single action or spends any amount of money to influence an election.[20] Some of these states require such groups to report all of their expenditures, no matter how small.[21] The existence of these statutes, with the substantial burdens they impose upon campaign activities, greatly enhances the importance of the constitutional questions raised by appellants in this case.

In sum, the Act, along with similar statutes enacted by other states, imposes significant burdens, which this Court has never approved, upon a broad spectrum of core protected speech and associational activities. The state's interest in regulation is significantly more attenuated than that which this Court has found adequate in other disclosure cases, and the burdens involved exceed those which disclosure statutes legitimately impose on more substantial political activity. Furthermore, the Alaska Supreme Court's decision conflicts with the holdings and reasoning of several federal and state courts. Clearly, the Act as upheld by the Alaska Supreme Court

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[20] *E.g.*, Ala. Code §§ 17-22-1(3), 17-22-9; D.C. Code Ann. §§ 1-1401(5), 1-1414; Md. Ann. Code art. 33, §§ 1-1(14) (Supp. 1987), 26-4(a); Mass. Gen. Laws Ann. ch. 55, §§ 1, 5 (Supp. 1988); Mont. Code Ann. §§ 13-1-101(12), 13-37-201. Several other states require registration or reporting whenever an institutional purpose of *the group* is to influence an election. *E.g.*, Ariz. Rev. Stat. Ann. §§ 16-901(1), 16-902 (Supp. 1987); Kan. Stat. Ann. §§ 25-4143(i), 25-4145; N.M. Stat. Ann. §§ 1-19-26(E), 1-19-27, 1-19-27.1; N.C. Gen. Stat. §§ 163-278.6(14), 163-278.7, 163-278.9(a); Ohio Rev. Code Ann. §§ 3517.01(B)(8), 3517.10; Or. Rev. Stat. §§ 260.005(11), 260.042, 260.112; Tex. Elec. Code Ann. §§ 251.001(12), 252.001, 252.002 (Supp. 1988). These statutes may be somewhat narrower than the Act in that they might not cover a pre-existing group (*e.g.*, husband and wife) that only incidentally engages in compaign activity. However, they would still appear to cover *ad hoc* groups formed for single, small-scale activities.

[21] *E.g.*, Ariz. Rev. Stat. Ann. §§ 16-909, 16-915 (Supp. 1987); Mont. Code Ann. § 13-37-230; Ohio Rev. Code Ann. § 3517.10(B)(5).

could not survive constitutional challenge if enacted in any of several other states.[22] For these reasons, the question of the Alaska Act's overbreadth is substantial and warrants plenary consideration by this Court.

II. THERE IS A SUBSTANTIAL QUESTION WHETHER THE ACT IS UNCONSTITUTIONALLY VAGUE.

A vague statute, like an overbroad one, raises especially serious constitutional concerns when it affects activity that is protected by the First Amendment. In addition to the risks posed by all vague penal statutes—that citizens may have inadequate notice to conform their behavior to legal standards and that enforcement authorities may abuse their untrammeled discretion—such a statute may chill protected speech which was not intended to be burdened but which the ordinary citizen may fear is affected by the unclear statute. See *Grayned* v. *City of Rockford*, 408 U.S. 104, 108-09 (1972); *NAACP* v. *Button*, 371 U.S. 415, 432-33 (1963). The unfortunate effect of a vague regulation of speech may be that those who are most cautious and most sensitive to their legal obligations will remain silent rather than risk violating the law, thus depriving society of vital speech on issues of public importance. *Baggett* v. *Bullitt*, 377 U.S. 360, 372 (1964). For this reason, a regulation of speech is unconstitutional if its vagueness is "both real and substantial" and there is "no readily apparent construction . . . for rehabilitating the statute[] in a single prosecution." *Young* v. *American Mini Theatres*, 427 U.S. 50, 60 (1976); *Gooding* v. *Wilson*, 405 U.S. 518, 521 (1972) (quoting *Dombrowski* v. *Pfister*, *supra*, 380 U.S. at 491).[23]

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[22] *See* pp. 17-18, *supra*.

[23] It is no answer that authorities do not intend to enforce the law where the state does not have a legitimate interest, for unless there is a clear line discernible to the ordinary citizen, the mere threat of enforcement may deter protected speech. *Baggett*, 377 U.S. at 373-74.

As with overbreadth, there is no requirement that a statute be vague as applied to a particular plaintiff's speech in order for that plaintiff to challenge the statute. *Young*, 427 U.S. at 59-60; *Button*, 371 U.S. at 432-33. Furthermore, it is established that because criminally enforceable disclosure requirements may significantly deter speech, they are subject to the same scrutiny for vagueness as direct govermental limitations on speech. See *Hynes* v. *Mayor of Oradell*, 425 U.S. 610 (1976); *Buckley*, 424 U.S. at 76-80. "Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *Button*, 371 U.S. at 438.

As construed by the Alaska Supreme Court, the Act is unconstitutionally vague in two respects. First, the Act does not define when two or more people are "acting jointly" so as to constitute a "group" within the statutory meaning. On its face, this terminology gives no guidance as to where "joint action" lies on the spectrum between general discussion of parallel activity and formal association. In fact, the vagueness of the term is illustrated by the events leading up to this case, in which appellee's own Executive Director originally indicated that activity which is materially indistinguishable from that for which appellants were later penalized did not constitute "joint action." See App., *infra*, 10a-13a (Executive Director's earlier opinion estopped appellee from penalizing a portion of appellants' nondisclosure). This uncertainty supports the inference that the Act does not embody an "ascertainable standard of conduct" that is "susceptible of objective measurement." *Baggett*, 377 U.S. at 372, 366-67. Thus, any two individuals acting together may legitimately fear a *post hoc* determination by appellee that they acted as a "group."

This Court has consistently invalidated or, alternatively, limited disclosure and campaign regulation statutes that employ similarly vague terms. For instance, this Court held in *Buckley* that regulations applicable to

expenditures made "relative to" a candidate or "for the purpose of influencing" an election could not be enforced unless they were limited to "explicit words of advocacy" of a candidate's election or defeat. 424 U.S. at 41-44, 76-80.[24] The Alaska Act contains no similarly clear limitation on what constitutes "joint action," and the Alaska Supreme Court did not undertake to supply one.

Similarly, this Court has also struck down a requirement that all solicitors for "recognized" charitable causes register with the municipality, on the ground that the ordinance gave inadequate notice of who must register. *Hynes* v. *Mayor of Oradell*, 425 U.S. at 621. The same is true of the Alaska Act. Finally, the Alaska Act's requirement of "joint action" is comparable to the application of expenditure limitations only to committees in which contributors have no "voice," which the Court in *NCPAC* found too vague to limit FECA's overbroad expenditure ceiling. 470 U.S. at 499. These decisions raise a substantial question as to whether the "joint action" standard in the Alaska Act is impermissibly vague.

Second, the Alaska Supreme Court itself acknowledged that its construction of the Act to cover only "substantial" action raised a vagueness problem. (App., *infra*, 21a-22a). The court concluded that there was no constitutional defect because any vagueness was only peripheral. However, the state court's own discussion suggests that the vagueness problem is more serious than the court acknowledged. For instance, the court included as "substantial" activity anything that is "likely to directly cause more than a few votes to shift." It is unclear, however, how many votes are "a few" or what public campaign activity is "likely" to have a significant effect

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[24] The court of appeals in *Buckley* struck down a parallel provision of FECA which could not, in context, be similarly limited. 519 F.2d at 869-78. This holding was not appealed to the Supreme Court.

on voters. Similarly, the court identified as an "ordinarily" insubstantial activity "wearing buttons at the workplace (provided there is no effort to cause more than a few votes to shift)." This standard fails to provide the constitutionally required guidance to the more likely conduct: a group of co-workers who hope to influence the votes of as many of their colleagues as possible by wearing campaign buttons to work. *Cf. Partido Nuevo Progresista* v. *Hernandez Colon*, 415 F.Supp. 475, 483-85 (D.P.R. 1976) (invalidating regulations that applied to "massive political activity" without defining the term "massive").

Thus, the Alaska Act, as interpreted by the Alaska Supreme Court, imposes potential criminal sanctions and potentially enormous civil penalties upon individuals under provisions that contain two strikingly vague phrases that are crucial to defining the scope of the law.[25] Taken alone or in tandem, these phrases raise a serious vagueness issue under this Court's decisions. Accordingly, this Court should exercise its appellate jurisdiction to review in plenary fashion whether the Act meets the constitutional standards of specificity applicable to a regulation of First Amendment speech.

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[25] The statute cannot be "rehabilitat[ed] . . . in a single prosecution." *Dombrowski, supra*, 380 U.S. at 491. If it could, the Alaska Supreme Court would undoubtedly have done so in this very case.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted,

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July 29, 1988

APPENDICES

APPENDICES

APPENDIX A

THE SUPREME COURT OF THE STATE OF ALASKA

File No. S-1598

VECO INTERNATIONAL, INC.,
and ITS SUBSIDIARIES,
Appellants,

v.

THE ALASKA PUBLIC OFFICES COMMISSION,
Appellee.

Appeal from the Superior Court of the State of Alaska
Third Judicial District, Anchorage
Roy H. Madsen, Judge

OPINION

[No. 3295—April 1, 1988]

Appearances: Sema E. Lederman, Clifford J. Groh, Lance E. Gidcumb, Groh, Eggers & Price, Anchorage, for Appellants. Richard D. Monkman, Assistant Attorney General, Juneau, Grace Berg Schaible, Attorney General, Juneau, for Appellee.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton, and Moore, Justices.

MATTHEWS, Justice.

MOORE, Justice, concurring in part, disssenting in part.

BURKE, Justice, dissenting.

Under the Alaska Campaign Disclosure Act, every group as defined in AS 15.13.130(4)[1] must register with the Alaska Public Offices Commission[2] before making a

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[1] AS 15.13.130(4) provides:

"group" means every state and regional executive committee of a political party and, in addition, means any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one person, or intends to expend more than 50 per cent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with his knowledge or consent unless, within 10 days from the date the candidate learns of the existence of the group he files with the commission, on a form provided by the commission, an affidavit that the group is operating without his control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 per cent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate;

[2] AS 15.13.500 provides:

Each group, before making an expenditure on behalf of, or in opposition to, a candidate or a contribution to a candidate, shall register, on forms provided by the commission, with the commission. If the group intends to support or oppose only one candidate, or to contribute to or expend on behalf of, or in opposition to, one candidate 50 percent or more of its funds, the name of the candidate shall be a part of the name of the group. Promptly upon receiving the registration, the commission shall notify the candidate of the group's organization and intent.

contribution to a candidate, and must file periodic reports concerning, among other things, its contributions.[3] The

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[3] AS 15.13.040(b), (c) (d), and (e) provide:

(b) Each group shall make a full report upon a form prescribed by the commission, listing

(1) the name and address of each officer and director;

(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of $100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred or authorized by it.

(c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.

(d) Every individual, person or group making a contribution or expenditure shall make a full report, upon a form prescribed by the commission, of the following contributions or expenditures:

(1) any contribution of cash, goods or services valued at more than $100 a year to any group or candidate; or

(2) any expenditure whatsoever for advertising in newspapers, on radio or on television; or, for the publication, distribution or circulation of brochures, flyers, or other campaign material for any candidate or ballot proposition in question.

(e) The report required under (d) of this section shall contain the name, address, principal occupation and employer of the individual filing the report, and an itemized list of expenditures. The report shall be filed with the commission by the contributor no later than 10 days after the contribution or expenditure is made. A copy of the report shall be furnished to the candidate, campaign treasurer or deputy campaign treasurer at the time the contribution is made.

AS 15.13.110 provides:

(a) Each candidate and group shall make a full report in accordance with AS 15.13.040 during the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report, or, if a first report, all contributions received and expenditures made

Alaska Public Offices Commission found that appellants VECO International, Inc., VECO, Inc., and Norcon, Inc.[4] had formed groups with their respective employees which had made contributions to candidates and had not complied with the reporting requirement of AS 15.13.040.

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before three days before the due date of the report. The report shall be filed at the following times:

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) ten days after the election; and

(4) December 31 of each year for expenditures and contributions received which were not reported that year.

(b) Each contribution or expenditure which exceeds $250 which is made within one week of the election shall be reported to the commission by date, amount, and contributor or recipient within 24 hours of receipt or expenditure by the candidate or campaign treasurer.

(c) The reports of candidates shall be filed with the commission's central office. All reports required by this chapter shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

(d) Within 30 days after each election, each supplier shall make a full report to the commission in accordance with AS 15.13.040. Within 60 days after each election, the commission shall prepare a summary by candidate or group of the transactions and make the summaries public.

(e) A group formed to sponsor an initiative, a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section.

[4] VECO, Inc. and Norcon, Inc. are subsidiaries of VECO International. They will hereafter collectively be referred to as VECO.

The Commission imposed a civil penalty under AS 15.13.125 of $72,600.[5] VECO appealed the decision of the Commission to the superior court, which affirmed the Commission. VECO now appeals to this court.

VECO raised money and made contributions in the following way. It encouraged its employees to authorize $100 to be withheld from their paychecks. The money would be paid to a candidate chosen by the Alaska Political Action Committee which was controlled by Bill Allen, chairman of VECO, and a colleague. Each of the VECO corporations was a member of the Political Action Committee. Each employee had the right to select a donee other than candidates chosen by the Committee within fifteen days after receiving notice of the Committee's choice.[6]

By mid-December of 1983, VECO had accumulated $41,080 from employee payroll deductions. VECO informed its contributing employees that the candidates recommended by the Political Action Committee were

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[5] *See* discussion of penalty calculation *infra* pp. 30-34.

[6] The authorization for payroll deduction states:

I hereby authorize the deduction of One Hundred Dollars ($100) from my next paycheck. The withheld money should be paid according to the recommendation of the Alaska Political Action Committee unless within fifteen days after receiving the Committee's recommendation I revoke this authorization. I understand that you will provide me with evidence of who received my contributions and in what amount so that I can use this information to take the tax credit off my Federal Income taxes. Also I will use this information to apply for the $100 maximum political contribution refund from the State of Alaska provided that I qualify as an Alaska resident and provided that the legislature appropriates funds for paying the refunds.

_____

Employee I.D. _____

Date: _____

Senators Bennett, Eliason, Faiks, Fischer, and Moss. Each employee received a notice from VECO stating, in part:

> Unless you notify APAC c/o Bob Ely, VECO International . . . that you do not wish to contribute to one or more of the above Alaska State Senators, your contribution and those of the other employees who have contributed will be allocated to one or more of the above supporters of a reasonable tax policy for the State of Alaska.

Of the 415 employees who had consented to the payroll deduction, one instructed VECO that his contributions should go to only one of the five recommended candidates, three others withdrew from the plan entirely, and two directed VECO to disburse no part of their contributions to one of the recommended candidates. It appears the others did not respond to the notice. Thereafter, the money was divided up in five nearly equal shares of approximately $7,700 and one share was distributed to each of the five candidates in a series of $100 checks.

Ten points on appeal are presented:

1. The superior court erred in giving retroactive effect to the Commission's regulations.

2. VECO did not form a group with its employees as defined by AS 15.13.130(4).[7]

3. The Commission is estopped from finding that the VECO withholding plan constituted group activity.

4. The Alaska Campaign Disclosure Act is unconstitutionally overbroad.

5. The Act is unconstitutionally vague.

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[7] The Commission's conclusion that three groups rather than one was formed is not challenged on appeal. We express no view concerning the correctness of this point.

6. The Act violates the right to privacy.

7. The Commission abused its discretion in failing to give VECO notice of delinquency.

8. The Commission erred in failing to make findings or state reasons regarding the penalties it assessed.

9. The penalties assessed are excessive.

10. The accrual of penalties during appeal is unconstitutional.

We hold that a partial estoppel should apply and that a statement of reasons regarding penalties should have been given. We also hold that the accrual of penalties during the administrative appeal was improper. The other points are rejected.

Point 1. *Retroactive Effect of Regulations.*

VECO makes two contentions concerning this point. First, it complains that the superior court relied on a regulation, 2 AAC 50.314(a)(1) (eff. 1/4/86),[8] defining the word "group," which was not in effect until after the case was decided by the Commission. VECO argues that this amounts to an unconstitutional *ex post facto* law application. Second, VECO argues that the post decision repeal of a regulation which required the reporting of any informal gathering of twenty-five or more people in a private home, 2 AAC 50.325(f)(4) (repealed 1/4/86), should not have been considered by the superior

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[8] 2 AAC 50.314(a)(1) states:

(a) In 2 AAC 50.310—2 AAC 50.405, "group" includes

(1) every combination of two or more persons who are elected, appointed, or otherwise chosen, or who cooperate for the purpose of raising, soliciting, collecting, or disbursing money or anything of value, or for directing or controlling those activities to secure or defeat the election to public office of an individual or candiate or to secure or defeat a ballot proposition.

court to moot VECO's argument that the Act violates the right to privacy.

These arguments reflect a misunderstanding of the standard of review which we employ in reviewing administrative appeals. "On appeal from an administrative appeal to the superior court we review the merits of the administrative determination directly, except to the extent that supplemental evidentiary proceedings have taken place in the superior court." *Oceanview Homeowners Ass'n v. Quadrant Constr. & Eng'g*, 680 P.2d 793, 798-99 (Alaska 1984); *Dresser Industries, Inc./Atlas Div. v. Hiestand*, 702 P.2d 244, 246 n.3 (Alaska 1985); *National Bank of Alaska v. State, Dep't of Revenue*, 642 P.2d 811, 816 (Alaska 1982). What VECO must demonstrate is error on the part of the Commission, not the superior court. These arguments do not speak to Commission error and thus do not require review.

Point 2. *Was A Group Formed Between the Employer and Participating Employees?*

Alaska Statute 15.13.130(4)[9] provides that a group is "any combination of two or more persons . . . acting jointly who take action the major purpose of which is to influence the outcome of an election . . . ." The Commission held that each of the three VECO employer corporations constituted a separate group with their respective contributing employees. Under the Act, a corporation is a person. AS 15.13.130(7), AS 01.10.060(8). The Commission noted that "two or more persons or individuals were involved in each plan" and that "the major purpose of each payroll deduction plan was to influence the outcome of an election." The combination and purpose requirements of the statutory definition having been satisfied, the issue that remained was whether joint action existed.

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[9] *See* footnote 1, *supra*.

The Commission found joint action because "the employers actively participated in determining which candidates would receive the pool of funds from their employees." Absent the employers' role in recipient selection, the Commission indicated that the joint action requirement would not be fulfilled:

> The Alaska Public Offices Commission staff has taken the position that a withholding plan does not constitute joint action when the employees names a specific candidate, or candidates, to receive the withheld money. With this position, the Commission agrees. Under such circumstances, the employer is a mere conduit and has played no active part in the plan other than to mechanically obey the directions of its employees.

VECO argues that "a proper interpretation of joint action would require an employer to decide which candidates received employee contributions and to force recalcitrant employees to contribute. There was no evidence that VECO took such joint action." We agree with the Commission's position. Joint action in a payroll withholding contribution plan does not require mandatory participation by all employees, nor an absolute right of selection on the part of the employer. When two people or entities act jointly, they cooperate or collaborate. One need not control the other. In this context, joint action exists if the employer has a significant role in candidate selection.

It is clear VECO had such a role. VECO distributed authorization forms which ensured, as a practical matter, that the great bulk of the contributions would go to candidates selected by the Alaska Political Action Committee. In itself that would be sufficient employer involvement for joint action. There was, however, more, as each of the corporations was a member of the Committee, and the Committee was co-founded and controlled by Bill Allen, VECO's chairman.

Point 3. *Should the Commission be Estopped?*

In August of 1983, Bill Allen and Ed Dankworth, a VECO consultant and lobbyist, met with Theda Pittman, Executive Director of the Commission. The meeting was recorded. Allen and Dankworth said they were considering a payroll withholding plan and they wanted to know whether it would be exempt from the Act's reporting requirements. Pittman was asked whether VECO could bring a candidate to one of its oilfield camps and encourage employees to contribute to the candidate's campaign by authorizing a payroll deduction. Pittman indicated that such activity would be exempt.[10] Pittman knew that the opinions that she expressed were likely to be relied upon.

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[10] The recorded colloquy was as follows:

DANKWORTH: If Bill went to his 700 employees up in Camp. This gets into a real important area because we intend to do that. Let's say Bill went up and took Don Bennett with him during a campaign and Bill says fellows here's the candidate that I have contributed and I think he is going to be good to the industry. I'd like for you to listen to what he's got to say. Any contributions you make to him are voluntary and there is not any condition to your job or anything. Make clear that there's no pressure on your job—maybe you can even put pressure—I don't know—but technically, he goes up and says this is good for the boys and I'd like for you to hear what he's got to say and if you could, I'd appreciate your giving him something. If you want to—because they don't carry cash around like they do down here—you can sign and says I voluntary agree that $100 can be taken out of my paycheck and paid out to Don Bennett. Any problem with that if Don goes and makes his spiel and as long as its not a condition of employment?

THEDA PITTMAN: No I think not—I have seen paycheck stubs where the employer does the kind of thing that you are talking about for a variety of things, one of which was raffle tickets for a political campaign, but it was I mean there is just no question about that it was exactly as you described. The individuals decided whether or not to and how much to and that mechanism of the employer doing that transmittal was well documented—that it was simply that kind of transmittal.

On December 16th, Robert Ely, counsel for VECO, delivered various documents to Pittman, including the authorization for payroll deduction. Pittman agreed to have them reviewed to determine whether the reporting requirements of the Act applied to the plan which the documents depicted.

Pittman, on behalf of the Commission, wrote two letters in response to this request. The first, delivered February 9, 1984, indicated that if employees specified the candidate recipient, "rather than granting APAC any discretion in that transaction," the transaction was exempt. Similarly, the second letter, dated February 16, 1984, stated:

> if the recipient of the withheld funds is not specified by the employee, than a group would have been formed under AS 15.13 with the employer as the administrator/treasurer. It seems plain to me that the employer cannot first get authority only to withhold pay and later go back for permission to give the funds to particular candidates or political groups.

The general elements of estoppel are (1) the assertion of a position by conduct or word, (2) reasonable reliance by another on the assertion, and (3) resulting prejudice. *Jamison v. Consolidated Utilities*, 576 P.2d 97, 102 (Alaska 1978). Even if these requirements are present, an estoppel against the government will not be invoked if the public interest would be significantly prejudiced. *Municipality of Anchorage v. Schneider*, 685 P.2d 94, 97 (Alaska 1984).

VECO argues that the Commission should be estopped from finding that each employer corporation and its contributing employees constituted a group. It argues that it reasonably relied on Pittman's statement at the August 11, 1983 meeting that it was not group activity for an employer to encourage employees to contribute to a particular political candidate.

The state counters that the August meeting was brief and Pittman's response was informal and vague. Thus, reliance on her response could not be regarded as reasonable.

In our view, Pittman's opinion expressed during the August meeting could reasonably have been relied on by VECO in crafting its employee withholding plan. Dankworth stressed the importance of his question, and Pittman's answer, though informal, was clear. The means of employer participation in the selection of the recipient of the employee's funds was different in the question on which Pittman commented than in the actual plan. However, significant employer participation in the selection of the recipient was present in both the question and the actual plan. Such participation was, if anything, greater in the hypothetical plan. Further, no regulations or Commission decisions then existed which would cast doubt on either the substance or the form of Pittman's opinion, or the extent to which VECO could rely on it.[11]

The period during which VECO could reasonably rely on Pittman's answer terminated with her letters of February, 1984. These clearly indicated that what VECO had done was group activity, because the Political Action Committee, rather than the employee, selected the recipient.

VECO's first reports were due January 16, 1984. The next were not due until thirty days before the August 1984 primary election. AS 15.13.120(a)(1). VECO's reasonable reliance thus served to excuse only the late filing of the first reports and as to them it served only for the time reasonably needed to prepare and file the reports after receiving Pittman's February letters.

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[11] Subsequent to the facts which gave rise to this case the Commission adopted a rule concerning advisory opinions which specifies the circumstances in which they will be issued and the extent to which they can be relied on. 2 AAC 50.905 (eff. 1/4/86). No similar rule was in effect in 1983 or 1984.

VECO argues that its reliance on Pittman's August, 1983 statement excuses it from ever filing any reports relating to the payroll withholding plan. This assumes that the prejudice which VECO suffered is inherent in the obligation to report, rather than in the penalties which were imposed because of not reporting. We disagree. The reporting requirement imposed by the Act on groups are not particularly burdensome and neither VECO nor its employees have demonstrated a protected interest in the confidentiality of their political contributions.[12] Thus, VECO in reliance on Pittman's answer suffered legally cognizable prejudice only by being fined for late filing of the first reports. It did not, as in some other government estoppel cases, take action which could not be remedied at all or without great expense.[13]

Point 4. *Overbreadth*

The right to act in concert with others for political purposes is protected by the first amendment to the United States Constitution and by the free speech provision of the Alaska Constitution,[14] article I, section 5.[15] The Supreme Court has said:

> [T]he practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process. The 19th century Committees of Correspondents and the pamphleteers were early examples of this phe-

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[12] *Cf. Messerli v. State*, 626 P.2d 81 (Alaska 1981).

[13] *Cf. Municipality of Anchorage v. Schneider*, 685 P.2d 94, 97 (Alaska 1984) (owner constructed building in conformity with building permit mistakenly issued by Municipality); *Fields v. Kodiak City Council*, 628 P.2d 927 (Alaska 1981).

[14] *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982).

[15] Alaska Constitution article I, section 5 provides: "Freedom of speech. Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right."

nomena and the Federalist Papers were perhaps the most significant and lasting example. The tradition of volunteer committees for collective action has manifested itself in myriad community and public activities; in the political process it can focus on a candidate or on a ballot measure. Its value is that by collective effort individuals can make their views known, when, individually, their voices would be faint or lost.

. . . .

The Court has acknowledged the importance of freedom of association in guaranteeing the right of people to make their voices heard on public issues:

> "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association"
>
> . . . .
>
> "The first amendment protects political association as well as political expression"

Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley, California, 454 U.S. 290, 294-95, 70 L. Ed. 2d 492, 497-98 (1981) (citations omitted).

Restrictions on the right to associate in pursuit of political beliefs are permissible only where the government is able to show that the restrictions are justified by compelling governmental interests. *Vogler v. Miller*, 651 P.2d 1, 5 (Alaska 1982). Further, the restrictions must be no broader than needed to accomplish the governmental interests which justify them. *Id.*

Under the Alaska Campaign Disclosure Act, "[e]ach group before making an expenditure" must register with the Commission and file the name and address of its treasurer. AS 15.13.050, 060. In addition, each group must report periodically the name and address of each officer and director, the aggregate amount of all contributions made to it, the date and amount of all con-

tributions made by it, and all expenditures which it has made. AS 15.13.040(b).[16]

In *Messerli v. State*, 626 P.2d 81 (Alaska 1981), we reviewed the reporting requirements of the Act. Messerli, acting individually, had sponsored newspaper advertisements designed to influence certain ballot propositions in a municipal election. He did not file a report as required by AS 15.13.040(d), and was prosecuted for violation of the Act. He moved to dismiss the prosecution on constitutional speech and privacy grounds. From the denial of this motion in the trial court we accepted review. We noted that the statutory disclosure requirements placed a burden on one's right of expression to the extent that some people might be unwilling to publish their views if they were required to identify themselves. *Id.* at 86. We held, however, that this burden was in general outweighed by the need for an informed electorate:

> Proper evaluation of the arguments made on either side can often be assisted by knowing who is backing each position. We have long recognized in court proceedings the importance of revealing to the decision maker the biases and motives of witnesses. Such information is no less important to an intelligent evaluation of what is being said during an election campaign. Similarly, a ballot issue is often of great importance financially to its proponents or opponents, or both, and multimillion dollar advertising campaigns have been waged. In such circumstances the voter may wish to cast his ballot in accordance with his approval or disapproval of the sources of financial support.

Id. at 87 (footnotes omitted). However, in cases where individuals had a special need for anonymity, as where

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[16] Contributions made to each group in excess of $100 must be itemized and information concerning the contributor must be set forth.

they might be subject to reprisals for publicizing their views, we held that the disclosure requirements could not be constitutionally applied. We directed the commission to adopt regulations establishing criteria for the identification of circumstances under which anonymity was required and remanded for a determination as to whether Messerli had a special need for anonymity.

There exist two other compelling grounds for the disclosure of information in political campaigns. These are the deterrence of corruption and the detection of violations of contribution limitations:

> [D]isclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post election special favors that may be given in return. . . .
>
> [N]ot least significant, record keeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contributions limitations. . . .

Buckley v. Valeo, 424 U.S. 1, 67-68, 46 L. Ed. 659, 715 (1976), *quoted in Messerli*, 626 P.2d at 85.

VECO does not claim that any disclosure requirement is per se invalid, or even that the requirements are invalid as applied in this case. Rather, the claim is that the requirements are overbroad; some applications of the Act would unjustifiably infringe on protected activities. Under such a claim, it is irrelevant that the claimant's activities are not protected.[17]

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[17] This rule of expanded standing is unique to challenges under the first amendment and is applied because of the importance our society gives to the principles of free speech. *Gottschalk v. State*,

VECO claims that the Act imposes disclosure requirements on small groups that spend minor sums of money or even no money at all. It argues that the very existence of the requirements will chill the speech and associational rights of small groups which lack the knowledge or the initiative to comply. Furthermore, VECO argues that inclusion of such groups cannot be justified by compelling state interests.

As for groups that spend *no* money and receive *no* contributions, the state responds that the Act does not require them to register. We agree. The obligations to register under section .050 does not ripen until each group intends to make a contribution or expenditure.[18]

The Act does apply to groups that receive small contributions and make small expenditures but its applicaiton is justified, according to the state, by the objective of achieving an informed electorate and monitoring compliance with the $1,000 contribution limit and other legal requirements.[19]

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575 P.2d 289, 290 n.2 (Alaska 1978); *Marks v. City of Anchorage*, 500 P.2d 644, 656 n.7 (Alaska 1972). Standing is expanded because of the fear that an overbroad statute will "chill" conduct which is protected by the first amendment. *See generally* L. Tribe, *American Constitutional Law* 720 (1978).

[18] This interpretation is not inconsistent with the Commission regulation which requires a short form disclosure "[i]n the absence of any contribution or expenditure activity whatsoever during the reporting period." 2 AAC 50.332(a) (eff. 5/14/80). The obligation to register with the Commission and to report must be triggered by contribution or expenditure activity. The regulation only speaks to periods after the triggering event has occurred.

[19] The $1,000 contribution limit is set forth in AS 15.13.070(a). In addition, the state notes that accurate record keeping serves the goal of determining whether a candidate has fully reported contributions as required by AS 15.13.040 and the goal of determining whether a candidate has violated the ban on expenditures prior to filing a declaration of candidacy. As 15.13.100.

Concerning the goal of an informed electorate, the state argues:

> Disclosure informs voters about the sources of campaign funds. This information is critical to "place each candidate in the political spectrum more precisely than is often possible on the basis of party labels and campaign speeches," and to "alert the voter to the interests to which a candidate is not likely to be responsive and thus facilitate predictions of future performance in office."
>
> Disclosure of even a "token contribution" can provide the electorate with valuable information concerning the political position of a candidate.

Concerning accurate accounting the state argues:

> Accurate accounting starts at the outset. A group's first contribution may be "minimal" but a series of "minimal" contributions can quickly add up to "major" contributions. If proper records are not kept, the group can easily lose track of where its money has come from and where the money has gone.

Analytically, there are two ways a statute could be overbroad, which might loosely be termed "systemic" and "local." An overbroad statute is *systemically* overbroad if there is "no core of easily identifiable and constitutionally proscribable conduct that the statute prohibits." *Maryland v. J.H. Munson Co.*, 467 U.S. 947, 965-66, 81 L. Ed. 2d 786, 801-02 (1984). The separation of powers decreed by the state constitution requires that this court strike such a statute in its entirety, rather than re-draft it. *See* Alaska Const. art. II, § 1 (investing legislative power in the legislature); *see generally Kimoktoak v. State*, 584 P.2d 25, 31 n.6 (Alaska 1978).

On the other hand, a *locally*-overbroad statute is one where the unconstitutional applications can easily be

lumped together and severed. To strike such a statute would be "manifestly[] strong medicine," *Broadrick v. Oklahoma*, 413 U.S. 601, 613, 37 L. Ed. 2d 830, 841 (1973), particularly when the litigant's own activities are not protected, and the legislation clearly intended to proscribe them. In such cases, most courts will excise or construe the challenged portion, whenever possible, to avoid an unconstitutional result. *Cf. State v. Fairbanks North Star Borough*, 736 P.2d 1140, 1142 (Alaska 1987) (in a separation of powers challenge, this court found it was "under a duty to construe a statute to avoid constitutional infirmity where possible"). *See also Broadrick*, 413 U.S. at 613, 37 L. Ed. 2d at 841 (under the federal Constitution, "[f]acial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged statute").

Any expenditure or contribution, even one of only $1, will trigger the registration and reporting requirements of the Act. VECO's arguments concerning this minimal threshold are similar to those which were made in *Messerli*. Messerli had argued that the Act was overbroad because, among other reasons, it covers individuals who spent small amounts of money to influence the outcome of a ballot proposition.[20] Our opinion in *Messerli* does not mention this argument.

The Supreme Court of the United States in *Buckley v. Valeo* has indicated that the standard or review under the federal constitution on questions whether thresholds in disclosure laws are too low is one which is deferential to legislative judgments.

> [W]e cannot require Congress to establish that it has chosen the highest reasonable threshold. The line is necessarily a judgmental decision, best left in the context of this complex legislation to congressional

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[20] Petition for Review, *Messerli v. State*, File No. 4326 at 15.

> discretion. We cannot say, on this bare record, that the limits designated are wholly without rationality.

424 U.S. at 83, 46 L. Ed. 2d at 724.

We express no opinion on whether that same lenient standard of review is appropriate under the Alaska Constitution, because we see no reason—compelling or rational—for imposing the disclosure requirements on *all* joint activity.

There is a level of joint political activity below which the government has no legitimate interest in regulating. Extreme examples include a father and mother expressing their political views in a letter (to which is affixed a 22¢ stamp) to their child of voting age, a political discussion among a small group of friends over lunch, agreeing to wear buttons at work, and the like.

Admittedly, it is hard to imagine the Commission attempting to enforce the Act in those circumstances. However, in this case, we can eliminate that danger, along with its correlative chilling effect, by a very reasonable exercise of statutory construction.[21] We are confident the legislature would want the Act, as construed, to survive.

One of the crucial portions of the Act that contributes to its overbreadth is the definition of "group": " 'group' means . . . any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election." AS 15.13.130(4). By construing the word "action" to include only *substantial* action, the Act will not

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[21] We are influenced by the New Jersey Supreme Court's holding in *N.J. State Chamber of Commerce v. N.J. Election Law Enforcement Comm'n*, 411 A.2d 168 (N.J. 1980), a case similar to this one. The court accepted that the state disclosure requirements would unjustifiably chill unstructured groups spending small sums to influence legislation. *Id.* at 176. It went on to save the enactment by narrowing the meaning of the statutory phrase "to influence." *Id.* at 177.

be facially overbroad. Yet, it will remain largely intact to accomplish the legislature's salutary purpose of bringing about major political reform.

In particular, "action" should include only substantial activities that are likely to directly cause more than a few votes to shift, not including intimate activities conducted entirely within one's family circle. Examples of activities ordinarily included are fundraising, making contributions, holding political meetings, and advertising. Examples of activities ordinarily excluded are discussing politics with family or friends over dinner, wearing buttons at the workplace (provided there is no effort to cause more than a few votes to shift), and mailing a letter.

Admittedly, this construction of the definition of group is more vague than if all actions were encompassed, no matter how small. This is exhibitive of the peculiar connection that exists between overbreadth and vagueness: an attempt to remove a statute from one category often causes the statute to jump into the other. However, "action," as we have defined it here, is not unduly vague. Moreover, as applied to VECO, this definition is not even slightly vague. To the extent vagueness problems occur at all, they occur only at the periphery. That has never been grounds for facially invalidating a statute. *See Young v. American Mini Theatres*, 427 U.S. 50, 58-61, 49 L.Ed. 2d 310, 319-21 (1976) (in which, under the federal Constitution, the Supreme Court rejected a vagueness challenge, stating that "even if there may be some uncertainty about the effect of the ordinances on other litigants, they are unquestionably applicable to these respondents"). *See generally* L. Tribe, *American Constitutional Law* 718-22 (1978).

It should be noted that the Commission has authority to promulgate regulations that would further refine the definition of group. AS 15.13.030(10). That authority

includes the authority to impose an expenditure threshold, below which any activity would be exempt. Such an expenditure threshold would be extremely useful in eliminating any vagueness problem our construction of the definition of group may have created.

Point 5. *Vagueness*

The basic element of the doctrine of vagueness is a requirement of fair notice. Laws should give the ordinary citizen fair notice of what is and what is not prohibited. People should not be required to guess whether a certain course of conduct is one which is apt to subject them to criminal or serious civil penalties. *Gottschalk v. State*, 575 P.2d 289, 290 (Alaska 1978); *Stock v. State*, 526 P.2d 3, 8 (Alaska 1974). VECO argues that the definition of "group" is so amorphous and uncertain as to be unconstitutionally vague.

The Act provides that a group—a combination of two or more people acting jointly who take action, the major purpose of which is to influence the outcome of an election (AS 15.13.130(3))—which makes a contribution or exenditure must register and file periodic reports. In our view this definition imparts fair notice that the VECO plan is included, and is not unconstitutionally vague.

VECO relies on the Circuit Court decision in *Buckley v. Valeo*, 519 F.2d 821 (D.C. Cir. 1975), which held that the phrase "for the purpose of influencing the outcome of an election" was unconstitutionally vague. *Id.* at 878. *Buckley* is an instructive case but it does not support VECO's position. The court of appeals struck down section 437(a) of the Federal Election Campaign Act because it found the phrase "purpose of influencing the outcome of an election" too broad. The court found that Congress intended that the language of 437(a) not be narrowed by use of the adjective "major" before "pur-

pose" because Congress intended section 437 to be broader than another section of the Act which had been narrowed in prior cases by reading in the word "major" before "purpose." *Id.* at 874. Since the Alaska statutory definition of group includes the *major* purpose requirement, the *Buckley* case supports the proposition that our statutory definition is not unconstitutionally vague.

Point 6. *Privacy*

The right of the people to privacy is protected by article I, section 22 of the State Constitution. When a litigant claims that a statute infringes on his right to privacy, our first undertaking is to "determine the nature of [the litigant's] right, if any, abridged by [the statute]." *Ravin v. State*, 537 P.2d 494, 498 (Alaska 1975). Only if the litigant's rights have been abridged do we need to resolve whether the impingement is sufficiently justified. *Id.*

We have never yet entertained a claim that a statute theoretically impinges on some unknown person's right to privacy.[22] Thus, challenges based on privacy are unlike claims of overbreadth, where a litigant, in effect, gets "a prize for bringing to judicial attention a statute's potential unconstitutional applications to third parties." L. Tribe, *American Constitutional Law* 720 (1978). The overbreadth exception to the rule against third-party claims has rarely been extended to other types of constitutional argument.

In its brief, VECO fails to address its own right to privacy. Instead, VECO discusses the rights of two or more people who do not make contributions, and discussion groups. Worthy as those arguments may be, we de-

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[22] We have, however, allowed a doctor to raise privacy claims on behalf of his patients, where requiring the patients to raise the claims on their own would require them to forfeit the privacy they seek to protect. *Falcon v. Alaska Public Offices Comm'n*, 570 P.2d 469 (Alaska 1977).

cline to resolve them until requested to by one of the affected groups.

We do not imply that the specific groups formed by VECO and its employees have no right to privacy. But, the contours of that right have simply not been argued. Under these circumstances, we will not speculate, without evidence, whether that right was abridged.

Point 7. *Notice of Delinquency*

Under AS 15.13.030, "[t]he Commission shall . . . notify, by registered or certified mail, all persons who are delinquent in filing reports and statements required to be made under this chapter." VECO argues that under this statute and a regulation which interperts it, the Commission had a duty to notify VECO of its delinquencies and the Commission's failure to fulfill this duty excuses VECO's failure to file reports.

In our view, the duty to notify requirement only applies as to groups which have registered with the Commission pursuant to AS 15.13.050.[23] The legislature could not reasonably have intended the Commission to send delinquency notices to groups of which the Commission is not aware. Of course, the Commission had reason to know that VECO had formed groups as of February 1984. It certainly could have sent VECO deliquency notices at that point. However, stating that is not the same as concluding that the statute required the Commission to send such notices. Such a requirement would be difficult to administer. In every case where the defense of no notice of delinquency was raised an examination of Commission files and Commission personnel would have to be conducted in an effort to determine when the Commission reached the point of having reasonable cause. There is no indication in the statute that the legislature intended such an unwieldy result.

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[23] *See* footnote 2, *supra*.

Point 8. *Statement of Reasons*

VECO complains that the Commission should have filed a statement of reasons explaining why the maximum civil penalties were imposed against it. It points out that the Commission had the discretion to assess less than maximum penalties. AS 15.13.125 contemplates that facts in mitigation may be submitted to the Commission by a person against whom a penalty is assessed. VECO claims that such facts were presented by it, but one cannot tell whether they were considered by the Commission in the absence of Commission findings.

We agree that a statement of reasons should be given. It is well established in Alaska that in a formal adjudicative context findings and reasons are required. *Kenai Peninsula Borough v. Ryherd*, 628 P.2d 557, 562 (Alaska 1981).

In *Dickinson v. Davis*, 561 P.2d 1019, 1022-25 (Or. 1977), the Oregon supreme court required the Public Utility Commissioner to state the reasons for his decision to mitigate a penalty by twenty-five percent, pursuant to a similar penalty structure. The relevant statute allowed the Commissioner to mitigate any penalty on such terms as he considered proper. *Id.* at 1022. The court wrote: "precisely because an agency may see mitigation or remission as acts of grace, and by its mere inaction may impose the maximum penalty, these decisions represent greater threats of irrationality, inequality, and misuse." *Id.* at 1023. The court therefore required the Commissioner to identify the reasons for his decision to mitigate, since they would reveal the Commissioner's understanding of the statutory policies. "[A]rticulation of the commissioner's reasons and their application to the case facilitates development of consistent agency policies as the legislature presumably intended, as well as equality of treatment, as least until the Commissioner adopts a reasoned change of policy." *Id.*

The rationale of the *Dickinson* court applies to the present case. The Commission issued a written decision containing findings and reasons on all aspects of this case except with respect to the imposition of the penalty. On that subject the Commission gave no reasons why the maximum penalties were being assessed, nor did it discuss VECO's claims in mitigation. The case will be remanded for further findings and reasons as to this aspect of the case. *See Ryherd*, 628 P.2d at 563 (appropriate remedy is to remand for further statement of reasons where agency's expressed reasons are incomplete).

Point 9. *Excessive Penalties*

VECO also argues that the aggregate of fines against it amounts to an excessive penalty in violation of the due process clauses of the Alaska and United States Constitutions. The standard here is one of obvious unreasonableness. The penalty cannot be "so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable." *St. Louis Iron Mountain & Southern Ry Co. v. Williams*, 251 U.S. 63, 67, 64 L. Ed. 139, 141 (1919).

We are unable to say that the penalty imposed is obviously unreasonable. One of the primary purposes of the disclosure requirement is achievement of a fully informed electorate. VECO furnished substantial support to candidates in the 1984 election. The public was not informed of this support and to that extent the statutory purpose was frustrated.

In *Ferre v. State ex rel. Reno*, 478 So.2d 1077, 1082-83 (Fla. App. 1985), the court upheld the imposition of a fine in an amount equal to twice the amount of money unlawfully accepted and retained, against a claim that the fine was unconstitutionally excessive. The court found that increasing fines in direct relation to the amount of money unlawfully accepted was rationally related to the purposes of the statute.

Here, VECO has been assessed fines that are nearly double the amount of unreported campaign contributions which it made. The cost of failing to report increases in direct relation to delay in reporting. The penalty structure is rationally related to the goal of timely disclosure.

Point 10. *Accrual of Penalties During Appeal*

The Commission's staff conducted a preliminary investigation of the VECO plan and issued a report on September 19, 1984.[24] The staff recommended to the Commission that, among other things, the three VECO companies be subjected to civil penalties for failing to file several reports, namely the 1983 year end disclosure statement, the thirty day pre-primary campaign disclosure statement, the seven day pre-primary campaign disclosure statement and the ten day post-primary campaign disclosure statement. The staff recommended that VECO also be subject to civil penalties for other reports that would come due prior to the Commission's final decision. As of September 17, 1984, the staff calculated fines totalling $13,170. The Commission, on October 12th, approved the staff's recommendations with respect to the civil penalties. Under the Commission's regulations, the assessment of civil penalties was subject to what the regulations call an appeal under 2 AAC 50.390(e) (eff. 6/29/84). On November 9, 1984, VECO filed a document, entitled Motion for Reconsideration and Motion to Abate Penalties, a section of which was an appeal under regulation .390(e). Subsequently, VECO requested and was given an evidentiary hearing following which the decision of the Commission of February 16, 1985 was issued. Although the decision does not expressly refer to the motion for reconsideration and motion to abate penalties of November 9, 1984, that was the pleading to which the Commission's decision was responding.

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[24] The regulation governing preliminary investigations is found at 2 AAC 50.460 (eff. 5/16/76).

After receiving the decision of the Commission of February 1985, VECO promptly appealed to the superior court which granted a stay of the accrual of daily civil penalties retroactive to February 14, 1985. The fine originally calculated by the Commission staff was $4,390 per group, totaling $13,170, as of September 17, 1984. Because of daily accruals of the penalties and because four additional reports had become due, the penalty increased to $72,660 by February 14, 1985.[25]

a. *Daily accruals*

VECO argues that the imposition of continuing penalties from the time it initiated its appeal within the Commission on November 9, 1984 until the date that the superior court stayed the penalties, effective February 14, 1985, violates its procedural due process rights.

It relies on the "constitutional tolling" doctrine under which,

> a party whose conduct is made the subject of an administrative action must be given an opportunity to obtain a judicial test of the validity of such action, and, as a matter of due process, cannot be subjected to risk that substantial penalties will accumulate during the course of the judicial proceeding.[26]

The state's response to this argument is that assuming that the constitutional tolling doctrine applies, it only

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[25] The four additional reports were the thirty day pre-general report due October 8, 1984, the seven day pre-general report due October 30, 1984, the ten day post-general report due November 16, 1984 and the 1984 year and end report due, according to the Commission, January 16, 1985.

[26] VECO cites the following cases as representing this doctrine: *United States v. Pacific Coast European Conference*, 451 F.2d 712 (9th Cir. 1971); *St. Louis Iron Mountain & Southern Ry Co. v. Williams*, 251 U.S. 63, 64 L. Ed. 139 (1919); *Wadley Southern Ry. Co. v. Georgia*, 235 U.S. 651, 662-63, 59 L. Ed. 405 (1915).

applies when the right to judicial review is burdened by the risk of paying substantial penalties. That is not the case here since as soon as judicial review was initiated a stay of the accrual of further penalties was issued. Similarly, the superior court held that VECO could have appealed the Commission order of October 12, 1984. The court referred to AS 44.62.560(a) which provides in part:

> Judicial review by the superior court of a final administrative order may be had by filing a notice of appeal . . . The right to appeal is not affected by failure to seek reconsideration before the agency.

The court found that VECO chose the option of seeking administrative reconsideration rather than judicial review and concluded that procedural due process was not violated by the accrual of civil penalties during that period.

We find it unnecessary to decide whether the "constitutional tolling" doctrine was applicable in this case because a provision of the Alaska Administrative Code prohibits the accrual of penalties during administrative appeals before the Commission in cases such as this.

2 AAC 50.390(g) (eff. 6/29/84) provides:

> If a candidate or group's appeal is:
>
> (1) denied by the commission, commission staff will notify the candiate or group of its decision within 15 days and require that the civil *penalty originally assessed* be paid within 30 days after the date of the letter containing notification of the commission's decision . . . .

(Emphasis added) By referring to the "penalty originally assessed," the administrative code implicitly prohibits the accrual of penalties until thirty days following notification that the appeal has been denied.

It was therefore improper for the Commission to accrue penalties from the date of the original assessment until

thirty days after the Commission issued its opinion on February 16, 1985. As the superior court issued an order staying the accrual of civil penalties after February 14, 1985, no civil penalties from the date of the original assessment should have accrued.[27]

b. *New violations*

Part of the increase in penalty during the course of the administrative appeal was due to new violations of the Campaign Disclosure Act. Specifically, VECO failed to file four reports due at certain times from October, 1984 to January, 1985—the period surrounding the 1984 election.[28]

We do not believe that these new violations are excused by the "penalty originally assessed" language of 2 AAC 50.390(g), discussed above. That regulation prevents daily penalties from accruing, to avoid chilling the use of the appeals process. But, is purpose is not to immunize a claimant from the consequences of committing new violations. Of course, VECO could have sought to enjoin the state from enforcing the Campaign Disclosure Act. That would require a slowing of irreparable harm, among other things. *Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough*, 534 P.2d 549, 554 (Alaska 1975). But in the absence of such a showing, we do not believe 2 AAC 50.390(g) was intended to have the same effect as a preliminary injunction. We are particularly

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[27] The appellate record does not immediately reveal the date of the original assessment, or the "penalty originally assessed." Specifically, it is unclear whether that amount is the $4,390 figure (per group) contained in the staff's preliminary investigation, or whether it was a higher figure, assessed some days later. This should be resolved by the Commission when it reassesses the proper penalty.

[28] The fines for these new violations, together with the daily accrual thereon, amounted to $23,490 by the time the stay retroactively went into effect on February 14, 1985.

mindful of the fact that two of VECO's new violations involved the failure to file on October 8 and October 30, 1984, just prior to the election—perhaps the most important of all the reports. It was then that the public was most susceptible to influence, and most interested in improper influence.

It is not clear from the record whether penalties for the new violations were even formally assessed prior to the Commission's final decision on February 16, 1985. Yet, it seems that both parties understood the new violations to be included in the appeal. Under these circumstances, the Commission should now determine what portion of the fine can fairly be said to have been "originally assessed" for the four new violations. That portion is properly includable in the fine. However, for the four new violations, just as with the earlier violations, there should have been no further daily increase of the fine.

CONCLUSION

For the reasons stated, this case is REMANDED to the superior court with instructions to vacate the penalties assessed against VECO and remand the case to the Commission for reassessment of penalties in accordance with this opinion.

BURKE, Justice, dissenting.

I dissent.

Since its effective date,[1] the Alaska Constitution has contained the following guarantee: "Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right." Alaska Const. art. I, § 5. Today, without giving serious consideration to the meaning of this provision, this court puts its stamp of approval on legislation which imposes substantial and prior restraints on the right to speak in support of, or in opposition to, political candidates and ballot issues.[2] Such legislation is, in my judgment, patently invalid. I believe it is our duty to declare the Alaska campaign disclosure law unconstitutional, upon the ground that it infringes upon an absolute right: the right, under article I, section 5, to engage in political speech without government interference, *so long as there is no abuse, or at least some threatened abuse, of that right.*

Preliminarily, it should be noted that the majority repeats a mistake that was made in *Messerli v. State*, 626 P.2d 81 (Alaska 1980), where the court insisted upon viewing article I, section 5 as a provision which "on [its] face would appear to admit of no exceptions and which would prevent any restrictions by the legislature." 626 P.2d at 83 (footnote omitted). On this basis, the court approved of the campaign disclosure law, "because absolute freedom of speech . . . in all situations and on all occasions would in certain instances be incompatible with

[1] The Alaska Constitution became effective on the date Alaska was admitted to the Union, January 3, 1959.

[2] The majority concedes, and the parties appear to agree, that VECO's political activities are a form of "speech," and that the Alaska campaign disclosure law purports to regulate, and thereby "burdens," the exercise of the rights of free speech and political association. In *Alaska Gay Coalition v. Sullivan*, 578 P.2d 951, 959 (Alaska 1978), these were described by "fundamental rights."

the preservation of other rights essential in a democracy." *Id.* The same rationale is now used in the case at bar.

This, of course, is an entirely inaccurate description of article I, section 5. If anything is clear, it is that the right guaranteed by that section is *not* absolute under all circumstances; article I, section 5 expressly states that persons exercising their rights of free speech are "responsible for the abuse of that right."[3] Thus, the question in this case, as in *Messerli*, is not whether the right guaranteed by article I, section 5 is an absolute right. Undoubtedly there are times when it is not. The question is, whether limitations may be imposed—in this case limitations upon the right to speak in support of, or in opposition to, political candidates or ballot issues —without regard to whether the right to speak is being abused. This question, unfortunately, is not addressed by the majority, except by implication.

In my judgment, the meaning of article 1, section 5 is too plain to be misunderstood.[4] It clearly prohibits

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[3] The court, in *Messerli*, did acknowledge that its description of article I, section 5 was "not entirely accurate," noting the language quoted above. This part of article I, section 5, however, was said to be "not pertinent to the discussion in [the] case," and was otherwise ignored. 626 P.2d at 83 n.10.

[4] Several states have constitutional provisions similar to Alaska's article I, section 5. *See State v. Coe*, 679 P.2d 353, 360-61 (Wash. 1984). Article I, section 5 of the Washington Constitution, for example, is identical. The Washington provision was modeled after one that was contained in the California Constitution of 1879. *Id.* When called upon to interpret this provision, the California Supreme Court, more than ninety years ago, stated:

> The wording of this section is terse and vigorous, and its meaning so plain that construction is not needed. . . . It is patent that this right to speak, write, and publish cannot be abused until it is exercised, and before it is exercised there can be no responsibility.

Dailey v. Superior Court, 44 P. 458, 459 (Cal. 1896).

any and all limitations upon the right of free speech, other than those dealing with the abuse of that right. *See State v. Coe*, 679 P.2d 353 (Wash. 1984) (identical provision in the Washington Constitution "absolutely forbids" prior restraints against constitutionally protected speech).[5] My colleagues, nevertheless, insist upon treating this question as if it were the same as the First Amendment question, which it is not. "Balancing" the importance of an individual's right to speak against society's need for the restrictions imposed by the campaign disclosure act, they conclude that there is a compelling governmental interest in the latter. The intrusion upon the individual's right to speak is said to be justfied, because it (1) serves the need for an informed electorate, by identifying those supporting or opposing a particular candidate or ballot issue; (2) deters corruption and the appearance of corruption; and (3) aids in the detection of campaign contribution limit violations.

I have no quarrel with the majority's belief that these are worthwhile goals, which should be balanced against the danger that exists when people are free to speak in support of, or in opposition to, political candidates or ballot issues, *unhampered by restrictions such as those found in Alaska's campaign disclosure law.* This, however, is exactly what occurred when the people ratified and adopted the state constitution. The required "balancing," in other words, has already been done *by the people.* This being so, it is beyond the power of the legislature and this court to say that the people made the wrong choice. As the only body of state law approved and adopted by direct vote of the people, the constitution

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[5] This is the usual and ordinary meaning of the words used, and there is nothing in the history of article I, section 5 to suggest an that those words were intended to have some other meaning. *See* 2 Proceedings of the Alaska Constitutional Convention 1305-07 (January 5, 1956).

is supreme. Alaska Const. art. I, § 2 (all political power resides in the people).

Whether or not the legislature believes the legislation in question is necessary, and irrespective of this court's agreement or disagreement with the legislature's judgment, there is an unqualified constitutional prohibition against laws restraining the right to speak, so long as the speaker does not abuse that right. It defies logic, as well as accepted principles of constitutional law, to allow this express prohibition to be overridden by a statute which imposes direct restraints on the very right the constitution protects. *See Matthews v. Quinton*, 362 P.2d 932, 944 (Alaska 1961) (police power may not be exercised in contravention of plain and unambiguous constitutional provisions). The fact that it is being overridden for a worthwhile purpose is immaterial.

It is possible to conclude, I suppose, that the people didn't know what they were doing when they ratified article I, section 5, and that we, therefore, are entitled to protect them from the consequences of such action. This, however, is a dangerous step, and one that I do not care to take. The decision in this case suggests that the majority may feel otherwise.

MOORE, Justice, concurring in part and dissenting in part.

I agree with the court's opinion, except insofar as it implies that APOC was correct in determining that *three* groups were involved in this case.

According to APOC, one group consisted of VECO, Inc. and its employees; the other two groups consisted of subsidiary corporations together with their employees. Thus, APOC assessed three separate fines for each violation of the Campaign Disclosure Act.

I think that only one group was involved, consisting of the VECO conglomerate. The joint action required by AS 15.13.130(3) extended beyond the individual corporate units and their employees. It involved a single plan, evidently directed by the chairman of VECO.

When there is any ambiguity about the outer bounds of joint activity, the purposes of disclosure require that the largest possible network be considered a single group. We have said that "disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." *Messerli v. State*, 626 P.2d 81, 85 (Alaska 1980). This cleansing effect would be diluted, if not frustrated altogether, if a large group could be disguised as several smaller groups.

Since I would require the joint activity at issue in this case to be reported as a single group, I would also assess a single fine for each *failure* to report. Admittedly, imposing a separate penalty on each subgroup would make the total penalty, and therefore the total deterrent effect, much higher. However, the threat of criminal prosecution pursuant to AS 15.13.120(a) already provides ample deterrence.

While VECO did not appeal this issue, I think it was plain error. On remand, APOC should reassess the penalties accordingly.

APPENDIX B

IN THE
SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KODIAK

Case No. 3AN-85-02864 Civil

VECO INTERNATIONAL, INC., AND ITS SUBSIDIARIES,
Appellants,

vs.

THE ALASKA PUBLIC OFFICES COMMISSION,
Appellee.

MEMORANDUM DECISION

VECO International, Inc. and its subsidiaries, VECO, Inc. and Norcon, Inc., (hereinafter VECO) appeal from the decision of the Alaska Public Offices Commission (APOC) in File No. 84-4-CD dated February 16, 1985. The APOC found that the VECO companies through their employee payroll withholding plans were subject to the reporting requirements of the Alaska Campaign Disclosure Act (Act). The APOC assessed the maximum in civil penalties for failure to report. VECO appeals on a variety of constitutional and administrative grounds. The court AFFIRMS the decision of the APOC.

CASE HISTORY

The Alaska Political Action Committee (APAC) was formed in early fall, 1983, by Bill Allen, chairman of the VECO group of companies, and Tennessee Miller, chair-

man of the Frontier group of companies. Their purpose in forming APAC was to limit state taxation of the oil industry. (R. I at 41.) This purpose was to be achieved by coordinating state political contributions of the oil field service industry and by encouraging APAC members to develop employee payroll withholding plans, through which their employees could pledge $100 for campaign contributions. (R. I at 31.) The $100 amount was chosen because it is the maximum that the state will refund for political contributions. (R. I at 31, 40, 41.)

VECO developed a payroll withholding plan that was put into effect on October 2, 1983, when an employee signed an Authorization For Payroll Deduction form,[1] authorizing VECO to withhold $100 and APAC to recommend how the contribution should be spent. (R. I at 96.) Some 415 out of roughly 600 VECO employees signed the authorization forms, authorizing a total withholding of $41,080 by mid-December, 1983. (R. I at 32.)

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[1] The form is as follows:

AUTHORIZATION FOR PAYROLL DEDUCTION

I hereby authorize the deduction of $100.00 from my next paycheck. The withheld money should be paid according to the recommendation of the Alaska Political Action Committee unless within 15 days after receiving the Committee's recommendation I revoke this authorization. I understand that you will provide me with evidence of who received my contributions and in what amounts so that I can use this information to take the tax credit off my Federal income taxes. Also I will use this information to apply for the $100.00 maximum political contribution refund from the State of Alaska provided I qualify as an Alaskan resident and provided that the Legislature appropriates funds for paying the refunds.

_____

Employee Signature

Employee I D Number _____

Date: _____

In October and November of 1983, Allen and Miller in consultation with VECO lobbyist Ed Dankworth determined that APAC should support a list of five political candidates. (R. I at 33, 55.) In early December VECO sent to its employees a Notice To All Who Have Contributed To The Alaska Political Action Committee, giving them notice of the candidates chosen and until December 21, 1985 to revoke or modify the authorization. (R. I at 86.) Only a few employees exercised the right to revoke or direct how the contribution was to be spent. (R. I at 33). On December 21-23, 1983, VECO cut checks to the five selected candidates. VECO decided that the $41,080 should be divided among the five candidates as follows: each of the five candidates were to receive 77 contributions of $100 each, with one selected candidate to receive an extra $50 and another candidate an extra $20. VECO also determined which employee would contribute to which candidate by the following method: the five candidates were listed alphabetically; then VECO went down the list of employees alphabetically cutting a $100 check to each candidate in turn until the bottom of the employee list was reached. (R. I at 33.) The employees did not receive notice of which candidate had received their contribution until January 31, 1984. (R. I at 47.) VECO continued the payroll withholding plan during 1984. (R. I at 35.)

On August 6, 1984, a newspaper reporter called Theda Pittman, executive director of the APOC, and read to her the 1983 Notice To All Who Have Contributed To The Alaska Political Action Committee. (Pittman Deposition at 60.) The APOC staff then began an investigation of the VECO payroll withholding plan. The staff concluded that each of the VECO companies had formed a group[2] with its employees and recommended maximum civil

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[2] AS 15.13.130(3) defines group in pertinent part as:

"any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election . . ."

penalties totaling $13,170 for failure to file the reports required by the Act.[3] On October 12, 1984, the APOC adopted the staff recommendations and issued an order assessing maximum civil penalties.[4] VECO then Filed a Motion For Reconsideration And Motion To Abate Penalties and requested a formal hearing. The APOC granted the hearing, which was held on February 14, 1985, but did not abate the penalties, which had accrued to a total of $72,660 by the hearing date. On February 16, 1985, the APOC issued the decision, from which this appeal is taken. On February 27 VECO motioned this court to stay the civil penalties. The court granted the stay on April 15, 1985.

ISSUES

FIRST ISSUE

The first issue raised by VECO is whether the APOC is estopped from finding that VECO formed a group and assessing fines against VECO for failing to report as a group.

The general elements of equitable estoppel are (1) the assertion of a position by conduct or word, (2) reason-

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[3] AS 15.13.040(b) provides in pertinent part:

"Each group shall make a full report upon a form prescribed by the commission, listing . . .
(3) the date and amount of all contributions made by it . . ."

AS 15.13.110(a) requires that a group make its report at the following times:

"(1) 30 days before the election; . . .
(2) one week before the election;
(3) ten days after the election;
(4) December 31 of each year for expenditures and contributions received which were not reported that year."

[4] AS 15.13.125 provides for a civil penalty of $10 per day for each day that a report required by AS 15.13.110(a)(1), (3), or (4) is delinquent and $50 per day for each day that a report required by AS 15.13.110(a)(2) is delinquent.

able reliance thereon by another, and (3) resulting prejudice. *Jamison v. Consolidated Utilities, Inc.*, 576 P.2d 97, 102 (Alaska 1978).

In this case none of the elements of equitable estoppel are present. For VECO did not rely upon a position taken by the APOC prior to putting its payroll withholding plan into effect.

The first contact between VECO and the APOC was a telephone call on June 17, 1983, to Theda Pittman from Ed Dankworth, discussing a hypothetical situation of Arctic Slope businessmen meeting to determine which political candidates the oil industry should support. During this phone conversation the APOC took no position on a payroll withholding plan. (R. I at 66.)

The second contact between VECO and the APOC was a meeting of Pittman, Dankworth, and Allen on August 11, 1983, discussing in general the formation of a political action committee, the making of campaign contributions, the introduction of selected candidates to employees, and the mechanism by which North Slope employees could make political contributions through payroll deductions. Pittman indicated that there would be no reporting requirements if the employer merely transmitted funds from an employee to a candidate. (R. I at 67-70.) Pittman took no position at this time upon the VECO payroll withholding plan.

The third contact of VECO and the APOC was on December 16, 1983, when Robert Ely, general counsel for VECO, delivered to Pittman, as she was leaving her office, four documents that constituted the essence of the VECO payroll withholding plan.[5] Pittman testified that

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[5] The four documents that Ely delivered to Pittman are:

(1) Statement of Purposes-Alaska Political Action Committee; (R. I at 72.)

(2) APAC Membership Application; (R. I at 73.)

(3) Memorandum for Employee Talks; (R. I at 77-78.)

(4) Authorization For Payroll Deduction.

Ely at this brief meeting said that "the employee could specify the candidate who was to get the money, but we had no real discussion about the documents." (Pittman Deposition at 11.) The APOC did not assert a position on the four documents until the hand-delivery on February 9, 1984, of a letter from Pittman to Ely written on January 3, 1984. In this letter Pittman stated:

> "Under the employee's voluntary withholding program, you indicate that employees can specify the particular candidate who is to be a recipient of their withheld payroll rather than granting APAC any *discretion* in that transaction. Those kinds of transactions, which I would label earmarking, need not be reported by APAC as part of its income and expenditures." (Emphasis added. R. I at 88.)

VECO first withheld employees pay on October 2, 1983, and cut checks to APAC selected candidates on December 21, 1983. Thus, VECO put its payroll withholding plan into effect prior to the APOC's assertion of a position. Since the APOC did not assert a position on the actual VECO plan prior to its going into effect, there can be no prejudicial reliance and no equitable estoppel.

VECO also argues that the APOC should be estopped by the doctrine of quasi-estoppel. This doctrine precludes a party from taking a position inconsistent with one he has previously taken where circumstances render assertion of the second position unconscionable. One element of quasi-estoppel is that the first position be based upon full knowledge of the facts. *Jamison v. Consolidated Utilities, Inc.*, 576 P.2d at 102, 103. In this case, the APOC did not have full knowledge of the facts concerning the VECO payroll withholding plan. Therefore, there is no quasi-estoppel.

SECOND ISSUE

The second issue raised by VECO is whether the definition of group set out is AS 15.13.130(3) is unconstitutionally overbroad.

A statute is unconstitutionally overbroad if it "chills" the exercise of first amendment rights. *Summers v. Anchorage*, 589 P.2d 863, 866 (Alaska 1979). The First Amendment protects political association and political expression. *Buckley* v. *Valeo*, 424 U.S. 1, 15, 96 S.Ct. 612, 46 L.Ed.2d 659, 685 (1976). In order for a state to regulate political association and expression, it must demonstrate a compelling interest and employ closely drawn means. *First National Bank Of Boston v. Bellotti*, 45 U.S. 765, 786, 98 S.Ct. 1407, 1421, 55 L.Ed.2d 707, 724 (1978); *Buckley v. Valeo*, 424 U.S. at 25, 96 S.Ct. at 612, 46 L.Ed.2d at 691.

Facially, AS 15.13.130(3) appears overbroad in that it could chill the exercise of political association and expression. This statute is, however, only the definitional part of the Act. The operational part of the Act [6] only requires registering and filing of statements and reports by groups who make contributions to or have expenditures on behalf of a candidate. Furthermore, pursuant to

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[6] Relevant operational sections of the Act are in part:

Sec. 15.13.040. Contributions, expenditures and supplying of services to be reported.

(b). Each group shall make a full report upon a form prescribed by the the commission, listing . . .

(3) the date and amount of all contributions made by it and all expenditures made, incurred or authorized by it . . .

Sec. 15.13.050. Groups. Each group, before making an expenditure on behalf of, or in opposition to, a candidate or a contribution to a candidate, shall register, on forms provided by the commission, with the commission . . .

Sec. 15.13.080. Statement by contributor. A person or group contributing to a candidate over $250 . . . shall furnish the commission a signed statement, on a form made available by the commission. The statement shall itemize the contributions . . .

Sec. 15.13.110. Filing of reports. (a) Each candidate and group shall make a full report . . . (of) all contributions received and expenditures made before three days before the due date of the report . . .

the legislative directive under AS 15.13.030(10) to adopt regulations to clarify provisions of the Act, the statutory definition of group has been modified by a new section of the regulations, 2 AAC 50.314(a)(1), adopted by the APOC on August 23, 1985, which defines group as:

> every combination of two or more persons who are elected, appointed, or otherwise chosen, or who cooperate for the purpose of raising, soliciting, collecting, or disbursing money or anything of value, or for directing or controlling those activities to secure or defeat the election to public office of an individual or candidate or to secure or defeat a ballot proposition.

Disclosure of campaign contributions and expenditures serve substantial state interests in creating an informed electorate, in deterring corruption, and in detecting violations of contribution limitations. *State v. Marshall*, 633 P.2d 227, 235-36 (Alaska 1981), *quoting Buckley v. Valeo*, 424 U.S. at 66-68, 96 S.Ct. at 657-58, 46 L.Ed.2d at 715. The definition of group as limited by operational sections of the Act and as modified by 2 AAC 50.314(a)(1) is not constitutionally overbroad but serves compelling state interests in disclosure of campaign contributions and expenditures.

THIRD ISSUE

The third issue raised by VECO is whether the definition of group set forth in AS 15.13.130(3) is unconstitutionally vague.

VECO focuses on the words "group" and "acting jointly" and argues that a person of common intelligence would not know when a group is formed or what constitutes joint action.

There are three considerations in determining whether a statute is unconstitutionally vague:

> "First, a statute may not be so imprecisely drawn and overbroad that it "chills" the exercise of first amendment rights. The second consideration is that in order to be consistent with notions of fundamental fairness a statute must give adequate notice of the conduct that is prohibited. The final element in an analysis of statutory vagueness is whether the statute's imprecise language encourages arbitrary enforcement by allowing prosecuting authorities undue discretion to determine the scope of its prohibitions." *Summers v. Anchorage*, 589 P.2d 866-67. (footnotes omitted).

There is no overbreadth problem. The court has determined *supra* that the term "group" is not overbroad. Similarly, the term "acting jointly" does not have a chilling effect on first amendment rights. The plain meaning of "joint action", as modified by the operational sections of the Act and the implementing regulations, is "joint financial action." Disclosure of financial activity, the purpose of which is to influence the outcome of an election, serves compelling governmental interests. Therefore, the term "acting jointly" is not overbroad.

Turning to the second consideration, there is a problem that the Act may not give adequate notice of what constitutes a "group" or "joint action." The APOC has recognized this problem. Pittman has admitted that an ordinary citizen reading the Act may believe that a husband and wife may have reporting requirements. (Pittman Deposition at 162.) The APOC itself has stated that "(t)here may be areas wherein the meaning of 'joint action' would be uncertain . . ." (R. VII at 930.) Nevertheless, a statute which fails to give adequate notice of prohibited conduct may still pass constitutional muster if:

> "(a) there can be no question as to its applicability to the particular offense involved, and (b) a construction may be placed upon the statute so that in the future the type of offenses coming within its

> purview may be reasonably understood." *Stock v. State*, 526 P.2d 3, 8 (Alaska 1974). (footnotes omitted.)

The APOC found that the conduct of VECO fell squarely within "joint action." (R. VII at 930.)

Whether AS 15.13.130(3) is unconstitutionally vague is a question of law for which the court may exercise its independent judgment. *Jager v. State*, 537 P.2d 1100, 1107 n.23 (Alaska 1975). The finding of APOC that the conduct of VECO fell squarely within "joint action" is reviewed, however, under the substantial evidence test, which is such relevant evidence as a reasonable mind would accept as adequate to support a conclusion in light of the whole record. *Keiner v. Anchorage*, 378 P.2d 406, 411 (Alaska 1963).

The APOC's finding that the VECO companies and their employees formed groups by undertaking joint action to influence an election was based upon (1) the action of the employees in authorizing payroll withholding and (2) the action of the employers in determining which candidates selected by APAC received contributions and in what amounts. (R. VII at 929-30.) The court finds that this evidence in light of the whole record is adequate to support the conclusion that the employees took "action," and that their actions were "joint actions," joint meaning, as appellees argue, "something done by two or more persons together." Therefore, since the joint financial action of VECO and its employees fell squarely within activity that must be reported, there is no failure of AS 15.13.130(3) and its companion statutes and regulation to give VECO notice that disclosure was required.

Furthermore, any vagueness problem with the terms "group" and "joint action" can be cured by narrowly construing them. Pittman stated that "the thrust of the statute is the disclosure of financial activity" and that the APOC has not construed the term "group" to include

a husband and wife. (Pittman Deposition at 158, 163.) The APOC has modified the stautory definition of group by adopting 2 AAC 50.314(a)(1). The APOC interpretation of this regulation is entitled to great weight, *Borkowski v. Snowden*, 665 P.2d 22, 27 (Alaska 1983), and a deferential standard of review. *Rose v. Commercial Fisheries Entry Commission*, 647 P.2d 154, 161 (Alaska 1982). The APOC interpretation of "group" as excluding husband and wife and of "action" as meaning "financial action" has a reasonable basis and will be so construed.

Lastly, turning to the third vagueness consideration, a statute will not be invalidated "on vagueness grounds absent evidence of a history of arbitrary or capricious enforcement." *Summers v. Anchorage*, 589 P.2d at 868, *quoting Levshakoff v. State*, 565 P.2d 504, 507 (Alaska 1977). Since the court has determined that VECO's activity fell squarely within the disclosure provisions of the Act, there is no evidence before the court of arbitrary enforcement. The court holds, therefore, that AS 15.13.030(3) is not unconstitutionally vague.

FOURTH ISSUE

The fourth issue raised by VECO is whether AS 15.13.130(3) unconstitutionally infringes the right of privacy.

The right of privacy in Alaska is guaranteed by article I, section 22 of the Alaska Constitution, which provides in part:

> "The right of the people to privacy is recognized and shall not be infringed."

This explicit guarantee renders the Alaskan right of privacy broader than the federal right. *Messerli v. State*, 626 P.2d 81, 83 (Alaska 1981). A statute that impinges on the right of privacy may be upheld only if the statute

is necessary to further a compelling state interest. *Gray v. State*, 525 P.2d 524, 527 (Alaska 1974). The Alaska Supreme Court has determined that the Alaska Campaign Disclosure Act burdens the right of privacy. *Messerli v. State*, 626 P.2d at 84, 86. The validity of the Act's disclosure requirements is determined by weighing the extent of privacy invasion against the strength of the state interest requiring disclosure. *Falcon v. Alaska Public Offices Commission*, 570 P.2d 469, 476 (Alaska 1977).

VECO argues that privacy is infringed because

> "(e)very group of two or more persons or individuals, as set out in A.S. 15.13.130(3), must appoint a 'campaign treasurer,' A.S. 15.13.060, and report the name, adddess, principal occupation and employer of the 'campaign treasurer,' A.S. 15.13.040, even if the group does not make contributions or expenditures." (VECO's Appeal Brief at 28.)

VECO also argues that the Act infringes on the right of privacy in the home, "where the individual's privacy receives special protection," *Ravin v. State*, 537 P.2d 494, 503 (Alaska 1975), by the reach of 2 AAC 50.325(f)(4)[7], repealed on January 4, 1986, which when in effect may have a required reporting of informal get-togethers in homes if the number of people was greater than 25.

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[7] This former regulation provided in pertinent part:

> 2 AAC 50.325. RECORDKEEPING REQUIREMENTS FOR NONMONETARY CONTRIBUTIONS
>
> (f) Contributions of goods or services listed below are exempt from being reported by a campaign treasurer:
>
> (4) ordinary hospitality in a home; "ordinary hospitality in a home" means a small (no more than 25 people), informal get-together in a private home, where friends and neighbors of the host are invited to meet the candidate; functions held in private homes for the purpose of raising funds do not meet the criteria of ordinary hospitality in a home.

The repeal of 2 AAC 50.325 moots this part of VECO's privacy argument.

After the filing of VECO's Appeal Brief, the statutory definition of group was modified, as noted above, by the adoption of 2 AAC 50.314(a)(1), rendering the main aspect of VECO's privacy argument also basically moot. *See, Florida Medical Association, Inc. v. Department Of Health, Education And Welfare*, 454 F.Supp. 326, 330 n.5 (M.D. Florida 1978); *Johansen v. State*, 491 P.2d 759, 761 (Alaska 1971). Financial disclosure laws in general have as their purpose the promotion of efficient and ethical government and the preservation of the integrity and fairness of the political process. *Falcon v. Alaska Public Offices Commission*, 570 P.2d at 477. The purpose of campaign disclosure laws in particular is to create an informed electorate, to deter corruption and the appearance of corruption, and to detect contribution limitations. *State v. Marshall, supra.* The court finds that these state interests are compelling and outweigh the extent of the privacy invasion under the definition of group as limited by the operational sections of the Act and as modified by the regulatory definition.

FIFTH ISSUE

The fifth issue raised by VECO is whether the APOC abused its discretion in assessing a civil penalty against VECO.

VECO argues that in assessing a penalty against VECO for failure to file reports, the APOC abused its discretion because the APOC staff failed to follow its own regulation [8] and inform VECO of the obligation to

[8] 2 AAC 50.390(c) provides as follows:

"Commission staff will send notice to each candidate or group of his or its delinquency under AS 15.13.110(a) within five working days after the due date of the report."

report. The APOC staff did not inform VECO of its obligation to report until after the October 12, 1984, meeting at which the APOC approved the staff's recommendation that the VECO payroll withholding plan constituted group activity under AS 15.13.130(3). (VECO's Appeal Brief at 8. 33; R. V at 765.) VECO argues that the APOC should have notified VECO of the reporting requirements in late 1983 or early 1984 when the APOC had in its possession the documents constituting the VECO payroll withholding plan and had some knowledge[9] that the payroll withholding plan was in effect.

This argument is a variant of the estoppel argument. The court has determined that there was no prejudicial reliance and therefore no equitable estoppel and to quasi-estoppel from the contact between the APOC and VECO. Furthermore, the APOC had indicated to VECO previous to assessing a penalty that if any discretion were exercised in the operation of the payroll withholding plan, there would be reporting requirements.[10]

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[9] On January 11, 1984, an aid to Senator Faiks called Pittman with the information that Faiks had received checks from VECO and asking how to ascertain whether the contributions were individual contributions from the employees. (R. I at 90.)

[10] During the meeting of August 11, 1983, with Dankworth and Allen, Theda Pittman stated that if the employer simply transmitted funds from the employee to the candidate, there would be no reporting requirements. (R. I at 67-70.)

Pittman's letter of Jan. 3, 1984, to Robert Ely stated that "(u)nder the employees voluntary withholding program, you indicate that employees can specify the particular candidate who is to be the recipient of their withheld payroll rather than grant APAC any discretion in that transaction." (R. I. at 88.)

Pittman delivered this letter to Ely at their meeting of February 9, 1984, where Pittman stated to Ely that "an employer would not have formed a group through payroll withholding if the employee names the specific candidate who is to get the money, or

Pittman testified that she had no knowledge that VECO had exercised discretion in its employee payroll withholding plan until August of 1984 when the newspaper reporter called her and informed her of VECO's Notice To All Who Have Contributed To The Alaska Political Action Committee. (Pittman Deposition at 60, 208.)

AS 44.62.570(b) provides in part:

> "Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence."

Under the facts and circumstances of this case, the court cannot find that the APOC abused its discretion in not notifying VECO of its obligations to file reports until after its investigation was complete. Furthermore, the decision to assess a civil penalty against VECO is essentially an executive decision, involving agency expertise in a mixed law and fact setting, for which the standard of review is the reasonable basis test. *See, Jager v. State*, 537 P.2d at 1107; *Kelly v. Zamarello*, 486 P.2d 906, 916-17 (Alaska 1971). "The reasonable basis test requires deference to be given to an administrative determination if it has a reasonable basis in law and fact." *Storrs v. State Medical Board*, 664 P.2d 547, 554 (Alaska 1983). The court finds that the decision to assess a civil penalty has a reasonable basis and was not an abuse of discretion.

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names a political action committee that is going to get the money." (Pittman Deposition at 200-201.)

The February 9th meeting was followed by a letter to Ely from Pittman stating that "if the recipient of the withheld funds is not specified by the employee, then a group would have been formed under AS 151.13. with the employer as the administrator/treasurer." (R. I at 93.)

SIXTH ISSUE

The sixth issue raised by VECO is whether the APOC erroneously determined that VECO had taken "action" as set out is AS 15.13.130(3) and thereby formed a "group" with its employees.

The APOC based its finding that VECO formed a "group" by undertaking "joint action" upon the following facts: (1) "(T)he employers actively participated in determining which candidates would receive the pool of funds from their employees." (2) "VECO *et al.* divided the money received from the employees among the list of candidates selected by the Alaska Political Action Committee." (3) "(T)he employee had no knowledge of which candidate would receive a donation credited to that employee until after the donation had been made." (R. VII at 929.)

Findings of the APOC are reviewed under the substantial evidence test, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of the whole record. *Keiner v. City of Anchorage*, 378 P.2d at 411. The court may not reweigh the evidence but may only determine whether there is relevant evidence to support the APOC's findings. *Kessick v. Alyeska Pipeline Service Company*, 617 P.2d 755, 757 (Alaska 1980).

From an examination of the record, the court determines that the evidence relied upon by the APOC in making its finding that VECO took "action" and formed groups with its employees is relevant and reasonable.

SEVENTH ISSUE

The seventh issue raised by VECO is a variant of the sixth issue and is as follows:

> "Was there insubstantial evidence to find that VECO determined the recipients of its employee's contribu-

tions where the recipients were recommended by APAC and VECO was not associated with APAC?"

The court has already determined that the APOC's finding of "joint action" is supported by substantial evidence. Therefore, the court need not address this issue further.

EIGHTH ISSUE

The eighth issue raised by VECO is whether the APOC abused its discretion in assessing the maximum civil penalties against VECO without considering facts in mitigation.

VECO argues that the civil penalty is arbitrary because (1) the APOC failed to make findings of fact directly in support of the assessment of the maximum civil penalty, (2) the assessed penalty does not bear a reasonable relationship to the Act, and (3) the APOC did not consider VECO's efforts to comply with the Act as a factor in mitigation.

The APOC argues that VECO waived its objection to the penalty and the lack of specific findings by failing to file an affidavit in mitigation pursuant to AS 15.13.125.[11] The court finds that since this statute provides that an affidavit *may* be filed, the doctrine of exhaustion of administrative remedies does not apply and VECO has not waived its objections. *See, Southeast Alaska Conservation Council, Inc. v. Watson*, 697 F.2d 1305, 1309 (9th Cir. 1983).

The assessment of a civil penalty is a matter committed to agency discretion. The standard of review

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[11] AS 15.13.125 provids in pertinent part:

"An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed."

is whether the decision was arbitrary, unreasonable, or an abuse of discretion. *Southeast Conservation Council, Inc. v. State*, 665 P.2d 544, 548 (Alaska 1983). AS 44.62.570(b) provides in part:

> "Abuse of discretion is established if the agency has not proceded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence."

Also, relevant is AS 44.62.510(a), which provides in part:

> "A decision shall be written and shall contain findings of fact, a determination of the issues presented and the penalty, if any."

The APOC Decision of February 16, 1985, follows the statutory formula. The APOC made findings of fact. (R. VII at 924-27.) These findings concerned the basic, evidentiary facts. The APOC then presented and determined the issues. (R. VII at 928-31.) These determinations concerned the ultimate facts [12] that VECO formed groups with its employees and did not file the required reports. The APOC then set forth the penalty, the maximum provided by law, without stating its *reasons* for so doing [13].

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[12] "The law has long distinguished between ultimate findings and basic findings. An ultimate finding is usually expressed in the language of a statutory standard. . . . An ultimate finding is typically mixed with law or policy. . . . 'Basic facts' are somewhere between ultimate findings and a summary of each bit of evidence."

Davis, *Administrative Law*, Vol. 3 Sec. 14:27 at 124 (2d ed. 1978).

[13] "Reasons differ from findings in that reasons relate to law, policy, and discretion rather than to facts."

Davis, *Administrative Law*. Vol. 3 Sec. 14:21 at 103.

The distinctions among basic facts, ultimate facts, and reasons may be understood through an explanation of the proper administrative decisional process:

> "The process necessarily includes at least four parts: (1) evidence must be taken and weighed, both as to accuracy and credibility; (2) from attentive consideration of this evidence a determination of facts of a basic or underlying nature must be reached; (3) from these basic facts the ultimate facts, usually in the language of the statute, are to be inferred, or not, as the case may be; (4) from this finding the decision will follow by the application of the statutory criteria." *SCM Corporation v. United States*, 487 F.Supp. 96, 105 (Cust.Ct. 1980), *quoting Saginaw Broadcasting Co. v. FCC*, 96 F.2d 554, 559 (D.C.Cir. 1938), *cert. den.* 305 U.S. 613, 59 S.Ct. 72, 83 L.Ed. 391 (1938).

In this case the APOC set forth in its decision the basic and ultimate facts and the penalty. The court finds that the APOC in not stating its reasons for exercising its discretion in assessing the maximum penalty did not proceed in a manner contrary to law.

VECO's second argument is that the penalty assessed does not bear a reasonable relationship to the Act. The goals of the Act were identified as the creation of an informed electorate, the deterrence of corruption, and detection of violations of contribution limitations in *State v. Marshall*, 633 P.2d 277, 235-36 (Alaska 1981), *citing Buckley v. Valeo*, 424 U.S. 1, 66-68, 96 S.Ct. 612, 657-58, 46 L.Ed.2d 659, 715 (1976). There our court stated:

> "Failure to file reports required *before* the election frustrates these purposes, and presents a most egregious violation of campaign reporting laws." *Id.* at 236.

VECO failed to file reports *before* the election. The court finds that assessment of the maximum civil penalty

against VECO bears a reasonable relationship to the goals of the Act.

VECO's third argument is that the assessment of the maximum penalty is arbitrary because the APOC did not consider as a factor in mitigation the good faith effort of VECO to comply with the Act. Whether VECO made a good faith effort to comply with the Act is a matter of fact of which the APOC made no finding. Agencies are not required to make findings on issues the decision of which is unnecessary to the result. *Immigration And Naturalization Service v. Bagamasbad*, 429 U.S. 24, 25, 97 S.Ct. 200, 50 L.Ed.2d 190, 192 (1976). Given the substantial purposes of the Act and the nature of the violation, the court cannot find that the APOC abused its discretion in failing to determine whether VECO made a good faith effort to comply with the Act.

NINTH ISSUE

The ninth issue raised by VECO is whether the civil penalty assessed against VECO violates substantive due process.

VECO was assessed a maximum civil penalty of $13,170 on October 12, 1984. The penalty accrued at a rate of $480 per day until the hearing of February 14, 1985, for a total of $72,600. VECO argues that the penalty violates substantive due process because the penalty provisions of the Act are (1) "completely arbitrary and shocking to the sense of justice," *Stock v. State*, 526 P.2d 3, 18 (Alaska 1974), (2) "so severe and oppressive as to be wholly disproportionate to the offense (and) obviously unreasonable," *St. Louis, Iron Mountain & Southern Railroad Company v. Williams*, 251 U.S. 63, 67, 40 S.Ct. 71, 73, 64 L.Ed. 139, 141 (1919), and (3) the penalty is unrelated to the Act's goal of an informed electorate.

VECO's arguments pose questions of law for which the court may exercise its independent judgment. *Jager v. State*, 537 P.2d at 1107 n.23.

In due process analysis the court is required to balance the individual's interest versus the state's interest in the challenging act or procedures. *Wickersham v. State, Commercial Fisheries Entry Commission*, 680 P.2d 1135, 1145 (Alaska 1984); *Bush v. Reid*, 516 P.2d 1215, 1220 (Alaska 1973). The standard of review in substantive due process analysis is whether the legislative enactment bears a reasonable relationship to a legitimate governmental purpose. *State v. Rice*, 626 P.2d 104, 110 (Alaska 1981).

The goals of the Alaska Campaign Disclosure Act have been identified in *State v. Marshall, supra.* These goals are legitimate. The penalty provisions of the AS 15.23.125 provide for penalties of $10 or $50 per day. The court finds that these penalty provisions are not unreasonable or arbitrary and do not shock the conscience or lack a reasonable basis when balanced against the substantial goals of the Act. Furthermore, the court finds that the accrual of the penalties on a daily basis have a reasonable basis that is related to the goals of the Act.

TENTH ISSUE

The tenth issue raised by VECO is whether procedural due process prohibits the accrual of fines while the APOC reconsidered its initial decision.

On October 12, 1984, the APOC adopted the recommendations of the Staff Preliminary Investigation (R. I 1-27.) and assessed a civil penalty against VECO. On November 9, 1984, VECO filed with the APOC its Motion For Reconsideration And Motion To Abate Penalties. The Motion was filed pursuant to AS 44.62.540, 2

AAC 50.470(r)(3), and 2 AAC 50.390(e).[14] (R. V at 52, 65.) On November 27, 1984, VECO requested the formal hearing, which was held on February 14, 1985. The penalties assessed against VECO accrued at a daily rate of $480 per day until the hearing. The APOC issued its Decision on February 16, 1985. VECO filed its notice of appeal to superior court on February 27, 1985. This court stayed further accrual of civil penalties by the Order of April 15, 1985. VECO argues that accrual of civil penalties during administrative reconsideration violates procedural due process.

Our court has stated:

> "Beginning with *Wadley Southern Railway v. Georgia*, 235 U.S. 651, 35 S.Ct. 214, 59 L.Ed. 405 (1914), the Supreme Court has consistently held that due process is satisfied so long as the statutory scheme under review provides an opportunity for testing the validity of an administrative order without incurring debilitating or confiscatory penalties." *Matanuska Maid, Inc. v. State*, 620 P.2d 182, 191 (Alaska 1980).

Conversely, due process is violated when "appellants exercise the right of judicial review only at the risk of incurring severe penalties." *Id.* at 192.

Although the APOC order of October 12, 1984 has not been included in the Record On Appeal, it is a final order

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[14] AS 44.62.540(a) provides in part:

> "The agency may order a reconsideration of all or part of the case on its own motion or on petition of a party."

2 AAC 50.470(r) provides in part:

> The commission will, in its discretion, reconsider its decision in accordance with AS 44.62.540."

2 AAC 50.390(e) provides in part:

> "A candidate or group subject to a civil penalty assessment may
>
> (1) submit . . . an affidavit stating reasons for the late filing to show why a civil penalty should not be assessed . . ."

subject to review by superior court under AS 44.62.560 and AS 15.13.125 [15] Both VECO and the APOC considered the order a final order. (R.V. at 765-66, 786, 799.) That VECO sought administrative reconsideration rather than judicial review [16] was a matter of choice. "Appellants were accorded a statutory right to challenge the validity of the State's (assessment of civil penalty) and this is all that due process requires." *Id.* at 192. Therefore, because VECO had the right and opportunity to appeal to superior court the order of October 12, 1984, the court cannot find that procedural due process was violated by the accrual of civil penalties during administrative reconsideration. If VECO had appealed the initial decision, then if the decisional document or the Staff Preliminary Investigation report had proved inadequate to determine the basis of the APOC's decision, the court could have remanded the case for formal findings of fact. *Fields v. Kodiak City Council*, 628 P.2d 927, 933 (Alaska 1981).

DATED at Kodiak, Alaska, this 9th day of April, 1986.

/s/ Roy H. Madsen
ROY H. MADSEN
Superior Court Judge

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[15] AS 44.62.560(a) provides in part:

"Judicial review by the superior court of a final administrative order may be had by filing a notice of appeal . . . The right to appeal is not affected by the failure to seek reconsideration before the agency."

AS 15.13.125 states that the assessment of a civil penalty is "subject to right of appeal to the superior court."

[16] "Both 'review' and 'reconsideration in a broad sense refer to a re-examination of acts or a course of proceedings. But as normally used in the context of administrative adjudication, 'review' implies a consideration of a case by one other than the entity which initially decides it, while 'consideration' imples a re-examnation, and possibly a different decision by the entity which initially decides it."

Union Oil Company of California v. State, Department of Natural Resources, 526 P.2d 1357, 1363 n.9 (Alaska 1974).

APPENDIX C

STATE OF ALASKA
BEFORE THE ALASKA
PUBLIC OFFICES COMMISSION

APOC File No. 84-4-CD

IN THE MATTER OF:

VECO INTERNATIONAL, INC.,
and its subsidiaries,
Respondent

APOC File No. 84-4-CD (A)

IN THE MATTER OF:

ALASKA POLITICAL ACTION COMMITTEE,
Respondent

DECISION OF THE COMMISSION

On February 14, 1985, at approximately 10:30 a.m. at the offices of the Alaska Public Offices Commission in Anchorage, Alaska, the Alaska Public Offices Commission, together with a hearing officer appointed by the Governor for the purpose, conducted a hearing under the Administrative Procedure Act (AS 44.62) to hear arguments and receive evidence with respect to the above-referenced matters. The hearing officer and three members of the Commission (Ms. Opland, Ms. Klein, and Mr. O'Tierney) were present at the hearing in Anchorage. Two commission members (Mr. White and Ms. Rogers) were in Juneau but were able to hear and fully participate in the proceedings through teleconference and, later, speaker telephone mechanisms. The parties were present

by and through their attorneys—Mr. Fleischer for each of the Respondents and Mr. Monkman for the staff of the Alaska Public Offices Commission.

Pursuant to a "Stipulation as to Record and Hearing Procedures" signed by the attorneys for each of the parties and dated as of February 8, 1985, no oral evidence was presented at the hearing. Documentary evidence was introduced at the joint request of the attorneys for each party pursuant to the Stipulation, and reference is hereby made to "Exhibit A" of the Stipulation for a list of the documentary evidence so introduced and admitted. Under paragraph 7 of the Stipulation, the depositions of Allen, Dankworth, and Faiks and the affidavits of Robert C. Ely, Kelly Tyner, Roger Wickstrom, and Theda Pittman were to be deemed direct testimony at the hearing, and the Commission has treated these depositions and affidavits accordingly for purposes of reaching this Decision. All other evidence introduced, unless otherwise specifically provided herein, has been considered as, and given the weight accorded to, hearsay. As provided in AS 44.62.460(d), hearsay evidence has been considered to supplement or explain direct evidence but has not been considered sufficient by itself to support a finding unless it would be admissible over objection in a civil action.

Pursuant to AS 44.62.510 and 44.62.570 and after consideration of the evidence introduced at the hearing, the Commission adopts the following findings of facts:

FINDINGS OF FACTS

1. Prior to October of 1983, Veco International, Inc., Veco, Inc., and Norcon, Inc. each formulated and prepared for implementation a payroll deduction plan.

2. The payroll deduction plan formulated for each corporation was identical in operation.

3. Pursuant to the payroll deduction plan, the employees of each corporation were notified by their respective employers of the plan.

4. Each corporation distributed to its employees authorization forms in connection with the payroll deduction plan.

5. The signing of the authorization form by an employee authorized the employee's employer to withhold a stated amount of money from the employee's paycheck.

6. The money so withheld was to be used to provide a campaign contribution according to the recommendation of the Alaska Political Action Committee.

7. The employee signing the authorization was provided 15 days after receiving the recommendation of the Alaska Political Action Committee to revoke the employee's authorization.

8. Employees from each of the corporations signed authorizations.

9. During October of 1983, Veco International, Inc., Veco, Inc., and Norcon Inc. each began to withhold amounts from their employees' paychecks pursuant to authorizations received from those employees.

10. During December of 1983, the Alaska Political Action Committee distributed to its members a list of five legislative candidates recommended for contributions from the payroll deduction plans.

11. In December, 1983, the employees were notified of the list of candidates and allowed to withdraw from the plan.

12. Only three employees withdrew from the plan.

13. As a matter of bookkeeping expediency, comptrollers from Veco Inc., Veco International and Norcon Inc. decided to randomly assign employee contributions to the five candidates on the list.

14. The first contributions of amounts withheld by Veco International, Veco Inc., and Norcon Inc. pursuant to the payroll deduction plans were made on December 21, 1983.

15. Once the checks were sent out, each employee was sent a receipt showing to which candidate his/her money had been donated.

16. At no time did the majority of employee contributors know which candidate would receive their money until after the employer had sent the contribution to the candidate.

17. The Alaska Political Action Committee is an organization registered as a "group" under AS 15.13.050.

18. Included on the membership of the Alaska Political Action Committee are Veco International, Veco Inc., and Norcon Inc.

19. Alaska Political Action Committee was formed in October or November of 1983.

20. Alaska Political Action Committee registered as a "group" under AS 15.13.050 for 1984.

21. Alaska Political Action Committee reported contributions to certain candidates in 1984.

2. Alaska Political Action Committee has never reported any contributions to candidates made in 1983.

23. Neither Veco International and its employees, Veco Inc. and its employees, nor Norcon Inc. and its employees has ever registered as a "group" under AS 15.13.050.

24. Neither Veco International and its employees, Veco Inc. and its employees, nor Norcon Inc. and its employees has ever reported the contributions made to candidates in 1983 and subsequent thereto pursuant to their payroll deduction plans as provided in AS 15.13.040 and 15. 13.110.

DETERMINATION OF ISSUES

1. Did the formulation and implementation of the payroll deduction plan by Veco International, Veco Inc., and Norcon Inc. constitute the formulation of "groups" by each of the foregoing within the meaning of AS 15.13. 130(3)?

The Commission concludes that groups, within the meaning of AS 15.13.130(3) were formed by each of Veco International, Veco Inc., and Norcon Inc. as a result of the implementation by those corporations of the payroll deduction plans.

AS 15.13.130(3) defines "group" in pertinent part as "any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election". The only element of this definition which is in issue with respect to the VECO *et al.* payroll deduction plans is the requirement for joint action. Plainly two or more persons or individuals were involved in each plan, and it is equally clear that the major purpose of each payroll deduction plan was to influence the outcome of an election.

The Respondents take the position that the statutory definition is vague and unenforceable because it is not clear what constitutes joint action.

The action taken by the various employees of the corporations, it seems, is indisputable and undisputed. They "acted" by authorizing their employers to withhold payments from their checks and direct those withholdings to political candidates.

The Alaska Public Offices Commission staff has taken the position that a withholding plan does not constitute joint action when the employee names a specific candidate, to receive the withheld money. With this position, the Commission agrees. Under such circumstances, the employer is a mere conduit and has played no active part in the plan other than to mechanically obey the directions of its employees.

However, that is certainly not the case with the plans of VECO *et al.* Under their plans, the employers actively participated in determining which candidates would receive the pool of funds from their employees. VECO *et al.* divided the money received from the em-

ployees among the list of candidates selected by the Alaska Political Action Committee. The money was divided, for the most part, equally among those listed by Alaska Political Action Committee, but the employee had no knowledge of which candidate would receive a donation credited to that employee until after the donation had been made. It was only through the active involvement of the employers (both individually and, through their involvement in Alaska Political Action Committee, collectively) that the distribution to a particular candidate of the contribution made by a particular employee was finalized.

The Commission finds that this involvement by the employers in determining how the withheld money would be distributed among employees is "action" and, together with the employees' actions in authorizing the withholding, constitutes "joint action" within the meaning of AS 15.13.130(3). There may be areas wherein the meaning of "joint action" would be uncertain; the Commission does not believe this to be such a case.

Accordingly, the Commission concludes that separate groups, within the meaning of AS 15.13.130(3), were formed by Veco International, Veco Inc., and Norcon Inc. at the time that the payroll deduction plans of each of the foregoing were implemented by and through the distribution to candidates of monies withheld under such plans.

2. Did each of the previously described groups violate the reporting requirements of AS 15.13.040 and AS 15.13.110?

There has been no claim or argument made by Veco International, Veco Inc., or Norcon Inc. that reports required by AS 15.13.040 and AS 15.13.110(a) were filed by the previously described groups at any time.

The Commission finds that each group, composed of Veco Inc. and its employees, Veco International and its

employees, and Norcon Inc. and its employees, made a contribution to a candidate, or candidates, pursuant to AS 15.13.050 and AS 15.13.110 on December 21, 1983, and at that point were subject to registration and reporting requirements.

The provisions of AS 15.13.110(a) state, in part, that "each candidate and group shall make a full report in accordance with sec. 40 of this chapter" and shall file such reports on certain dates, including

> (1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;
>
> (2) one week before the election;
>
> (3) ten days after the election; and
>
> (4) December 31 of each year for expenditures and contributions received which were not reported that year.

Under the facts determined by the Commission, the first such report was required to be filed on December 31, 1983. Other reports as required in (1) through (3) above were required to be filed in 1984.

None of the foregoing fillings were made by Veco International, Veco Inc., or Norcon Inc. The Commission therefore concludes that each of the foregoing has violated, and continues to be in violation of, the filing requirements of AS 15.13.040 and 15.13.110.

3. What is the amount of the penalty applicable to the foregoing violation of AS 15.13.040 and 15.13.110?

AS 15.13.125 provides for a civil penalty of $10 per day for each day that a report required by AS 15.13.110 (a)(1), (3), or (4) is delinquent. This section further provides for a civil penalty of $50 per day for each day that a report required by AS 15.13.110(a)(2) is delinquent.

Since each of the groups made an expenditure or contribution on behalf of a candidate on December 21, 1983, reports as required under AS 15.13.110(a), beginning with the 1983 year-end report and continuing through and including the 1984 year-end report, have become due and are in default. Accordingly, the Commission finds that the appropriate penalties are, and hereby assesses, the amounts reflected for each group on the attached Memorandum from Theda S. Pittman to Richard D. Monkman dated February 13, 1985.

4. Did the Alaska Political Action Committee violate AS 15.13.050 by making contributions or expenditures for candidates prior to registration?

The Commission does not find sufficient evidence to support a conclusion that the Alaska Political Action Committee violated AS 15.13.050 by making contributions or expenditures for candidates prior to its registration in January 1984.

DATED, this 16th day of February, 1985, at Anchorage, Alaska.

ALASKA PUBLIC OFFICES COMMISSION

/s/ George H. White
GEORGE H. WHITE, Chairman

/s/ Jean C. Rogers
JEAN C. ROGERS, Vice Chairman

/s/ Arlayne D. Klein
ARLAYNE D. KLEIN, Commissioner

/s/ Mildred A. Opland
MILDRED A. OPLAND, Commissioner

/s/ Daniel P. O'Tierney
DANIEL PATRICK O'TIERNEY, Commissioner

Memorandum State of Alaska

Date: February 13, 1985

Telephone No.: 276-4176

Subject: CPA Calculation,
VECO Employer Groups
84-4-CD

To: Richard D. Monkman
Assistant Attorney General
Department of Law

From: Theda S. Pittman
Executive Director
Alaska Public Offices Commission

The maximum civil penalty assessments for the VECO employer groups as of Feb. 14, 1985, would be:

	NORCON, Inc.	VECO Inc.	VECO Internat'l.
1983 Year-end; Activity thru 12/31; due 1/16/84 Jan. 17, 84-Feb. 14, 85 = 395 days @ $10 ea.	$ 3,950	$ 3,950	$ 3,950
1984 30 Day Pre-primary; 1/1-7/27; due 7/30/84 July 31, 84-Feb. 14, 85 = 199 days @ $10 ea.	1,990	1,990	1,990
1984 7 Day Pre-primary; 7/28-8/18; due 8/21/84 Aug. 22, 84-Feb. 14, 85 = 177 days @ $50 ea.	8,850	8,850	8,850
1984 10 Day Post-primary; 8/19-9/4; due 9/7/84 Sept. 8, 84-Feb. 14, 85 = 160 days @ $10 ea.	1,600	1,600	1,600
1984 30 Day Pre-general; 9/5-10/5; due 10/8/84 Oct. 9, 84-Feb. 14, 85 = 90 days @ $10 ea.	1,290	1,290	1,290
1984 7 Day Pre-gen.; 10/6-10/27; due 10/30/84 Oct. 31, 84-Feb. 14, 85 = 107 days @ $5 0ea.	5,350	5,350	5,350
1984 10 Day Post-gen.; 10/28-11/13; due 11/16/84 Nov. 17, 84-Feb. 14, 85 = 90 days @ $10 ea.	900	900	900
1984 Year-end; Activity thru 12/31; due 1/16/85 Jan. 17, 85-Feb. 14, 85 = 29 days @ $10 ea.	290	290	290
TOTAL	24,220	24,220	24,220

Total as of Feb. 14, 1985 for all three groups = $72,660

Each additional day: $160 × 3 (groups) = $480

APPENDIX D

THE ALASKA CAMPAIGN DISCLOSURE ACT

Alas. Stats. Title 15, Chapter 13

Sec. 15.13.010. Applicability. (a) This chapter applies in every election for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, or judge seeking electoral confirmation. It also applies to every candidate for election to a municipal office in a municipality with a population of more than 1,000 inhabitants according to the latest United States census figures or estimates of population certified as correct for administrative purposes by the Department of Community and Regional Affairs. A municipality may exempt its elected municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by AS 29.71.800(20), or a special municipality-wide election called for that purpose, vote to exempt its elected municipal officers from the requirements of this chapter. The question of exemption from the requirements of this chapter may be submitted by the governing body by ordinance or by initiative election. Nothing in this chapter prohibits a municipality from regulating by ordinance campaign contributions and expenditures.

(b) Except as otherwise provided, this chapter applies to contributions, expenditures and communications made by a candidate, group, municipality or individual for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate.

* * * *

Sec. 15.13.040. Contributions, expenditures and supplying of services to be reported.

* * * *

(b) Each group shall make a full report upon a form prescribed by the commission, listing

(1) the name and address of each officer and director;

(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of $100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred or authorized by it.

(c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.

* * * *

Sec. 15.13.050. Groups. Each group, before making an expenditure on behalf of, or in opposition to, a candidate or a contribution to a candidate, shall register, on forms provided by the commission, with the commission. If the group intends to support or oppose only one candidate, or to contribute to or expend on behalf of, or in opposition to, one candidate 50 per cent or more of its funds, the name of the candidate shall be a part of the name of the group. Promptly upon receiving the registration, the commission shall notify the candidate of the group's organization and intent.

Sec. 15.13.060. Campaign treasurers. (a) Each candidate and group shall appoint a campaign treasurer who is responsible for receiving, holding, and disbursing all contributions and expenditures, and for filing all reports and statements required by law. A candidate may be a campaign treasurer.

(b) Each group shall file the name and address of its campaign treasurer with the commission at the time it registers with the commission under AS 15.13.050.

* * * *

Sec. 15.13.110. Filing of reports. (a) Each candidate and group shall make a full report in accordance with AS 15.13.040 during the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report, or, if a first report, all contributions received and expenditures made before three days before the due date of the report. The report shall be filed at the following times:

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) ten days after the election; and

(4) December 31 of each year for expenditures and contributions received which were not reported that year.

(b) Each contribution or expenditure which exceeds $250 and which is made within one week of the election shall be reported to the commission by date, amount, and contributor or recipient within 24 hours of receipt or expenditure by the candidate or campaign treasurer.

(c) The reports of candidates shall be filed with the commission's central office. All reports required by this chapter shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

(d) Within 30 days after each election, each supplier shall make a full report to the commission in accordance

with AS 15.13.040. Within 60 days after each election, the commission shall prepare a summary by candidate or group of the transactions and make the summaries public.

(e) A group formed to sponsor an initative, a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section.

Sec. 15.13.120. Penalty; limitations on actions. (a) A person who violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, is punishable by imprisonment for not more than one year or by a fine of not more than $5,000. A violation includes but is not limited to any of the following acts or omissions:

(1) failing to make a statement or report required to be made under this chapter, or failing to make a statement or report at the time the statement or report is required to be made under this chapter. . . .

Sec. 15.13.125. Civil penalty: late filing of required reports. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(1), (3), (4) or 15.13.110(d) is subject to a civil penalty of not more than $10 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(2) or 15.13110(b) is subject to a civil penalty of not more than $50 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed. However, the imposition of the penalties prescribed in this section or

in AS 15.13.120 does not excuse that person from filing reports required by this chapter.

Sec. 15.13.130. Definitions. In this chapter,

(1) "candidate" means a person who files for election to the state legislature, for governor, for lieutenant governor, for municipal office, for retention in judicial office, or for constitutional convention delegate, or who campaigns as a write-in candidate for any of these offices;

(2) "contribution" means purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods or services for which charge is ordinarily made and which is made for the purpose of influencing the nomination or election of a candidate, and in AS 15.13.010(b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party, or compensation of the personal services of another person which are rendered to the candidate or political party; however, "contribution" does not include

(A) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or ballot proposition or question, but it does include professional services volunteered by individuals for which they ordinarily would be paid a fee or wage;

(B) services provided by an accountant or other person to prepare reports and statements required by this chapter;

(C) ordinary hospitality in a home;

(3) "expenditure" means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of (A) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes

a candidate; or (B) use by a political party; or (C) the payment by a person other than a candidate or political party of compensation for the personal services of another person which are rendered to a candidate or political party; (D) influencing the outcome of a ballot proposition or question; however, "expenditure" does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(4) "group" means every state and regional executive committee of a political party and, in addition, means any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one person, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with his knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group he files with the commission, on a form provided by the commission, an affidavit that the group is operating without his control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 per cent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate;

(5) "individual" means a natural person;

(6) [*Repealed, § 88 ch. 74 SLA 1985.*]

(7) "person", in addition to the terms set out in AS 01.10.060, includes a labor union.

APPENDIX E

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Attorneys for Appellants,
VECO International, Inc.,
and its subsidiaries

IN THE SUPREME COURT OF THE
STATE OF ALASKA

Supreme Court No. S-1598

VECO INTERNATIONAL, INC., and its subsidiaries,
Appellants,

v.

THE ALASKA PUBLIC OFFICES COMMISSION,
Appellee,

Superior Court No. 3AN-85-3916 Civil

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that VECO International, Inc., VECO, Inc., and Norcon, Inc., the appellants above-named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Alaska, entered in this action on April 1,

1988, insofar as it affirmed the judgment of the Superior Court of the State of Alaska, Third Judicial District.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

DATED at Anchorage, Alaska this 13th day of June, 1988.

GUESS & RUDD
Attorneys for Appellants

By: /s/ Theodore E. Fleischer
THEODORE E. FLEISCHER

Theodore E. Fleischer, Esq.
Jocelyn M. Sedney, Esq.
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Attorneys for Appellant,
VECO International, Inc.,
and its subsidiaries

IN THE SUPREME COURT OF THE
STATE OF ALASKA

Supreme Court No. S-1598

VECO INTERNATIONAL, INC., and its subsidiaries,
Appellants,

v.

THE ALASKA PUBLIC OFFICES COMMISSION,
Appellee,

Case No. 3AN-85-3916 Civil

CERTIFICATE OF MAILING

DARIEL CLARK certifies as follows:

That I am a legal secretary in the offices of Guess & Rudd, 510 L Street, Suite 700, Anchorage, AK 99501.

That on the 13th day of June, 1988, I did deposit in the U.S. Post Office at Anchorage, Alaska, with postage thereon fully prepaid, an envelope which contained a true and correct copy of: NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES,

and CERTIFICATE OF MAILING; said envelope was addressed as follows:

Richard D. Monkman, Esq.
Assistant Attorney General
Grace Berg Schaible, Attorney General
Box K
Juneau, Alaska 99811

Judge Roy H. Madsen
202 Marine Way
Kodiak, Alaska 99615

DATED at Anchorage, Alaska, this 13th day of June, 1988.

/s/ Dariel Clark
DARIEL CLARK